Nos. 10112, ~~10114~~, 10115, 10123

United States
Circuit Court of Appeals
For the Ninth Circuit.

No. 10112.
HEARST PUBLICATIONS, INCORPORATED,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10114.
STOCKHOLDERS PUBLISHING COMPANY, INC.,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10115.
HEARST PUBLICATIONS, INCORPORATED,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10123.
THE TIMES-MIRROR COMPANY, a corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record
In Four Volumes
VOLUME I
Pages 1 to 483

Upon Petitions for Review and Enforcement of Orders of the National Labor Relations Board

ROTARY COLORPRINT, 590 FOLSOM ST., SAN FRANCISCO

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Page

Agreed Statement of Facts:

Case No. XXI-R-927 (Board's Exhibit No. 10) 60

Case No. XXI-R-928 (Board's Exhibit No 2) 49

Case No. XXI-R-1062 (Board's Exhibit No. 14) 64

Case No. XXI-R-1084 (Board's Exhibit No. 18) 68

Case No. XXI-R-1843 (Board's Exhibit No. 5) 283

Amended Notice of Hearing, dated May 15, 1940 (Board's Exhibit 1-M) 20

Amended Petition for Investigation and Certification of Representatives:

Case No. XXI-R-927 (Board's Exhibit 1-D) 5

Case No. XXI-R-928 (Board's Exhibit 1-F) 9

Case No. XXI-R-1062 (Board's Exhibit 1-P) 21

Index **Page**

Amendment to Agreed Statement of Facts, Case No. XXI-R-928 (Board's Exhibit No. 2a) 57

Amendment to Decision and Direction of Elections, dated January 18, 1941 124

Answer of the National Labor Relations Board and Request for Enforcement:

CCA No. 10112 1729

CCA No. 10114 1757

CCA No. 10115 1796

CCA No. 10123 1825

Answer of Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Dept.) to Complaint (Board's Exhibit 1-H) 254

Answer of Hearst Publications, Incorporated (Los Angeles Examiner Dept.) (Board's Exhibit No. 1-D) 369

Exhibit A—Findings and Award, filed August 26, 1941 376

Answer of Stockholders Publishing Company (Board's Exhibit No. 2-F) 387

Answer of Times-Mirror Company to Complaint (Board's Exhibit No. 2-H) 269

Exhibit A—Decision After Rehearing 274

Exhibit B—Findings and Award, August 25, 1941 276

Exhibit C—Findings and Award, August 26, 1941 278

Index Page

Answer to Amended Petition for Investigation and Certification of Representatives:

Case No. XXI-R-928 (Herald Exhibit No. 1) 490

Answer to Petition for Investigation and Certification of Representatives:

Case No. XXI-R-1062 (Board's Exhibit No. 1-S) 26

Case No. XXI-R-1084 (Examiner's Exhibit No. 1) 499

Answer to Second Amended Petition for Investigation and Certification of Representatives:

Case No. XXI-R-927 (Board's Exhibit No. 1-GG) 46

Bill of Sale; dated January 21, 1939, Mae Williams to Henry Powers (Herald Exhibit No. 5) 481

Blanket Challenge to Votes, Case No. XXI-R-928 154

Certificate of the National Labor Relations Board to Transcript of Record 1688

Certification of Representatives, Case No. R-1926 237

Index

Page

Charge:

Case No. XXI-C-1840 (Board's Exhibit No. 1-A) 242

Case No. XXI-C-1843 (Board's Exhibit No. 2-A) 260

Case No. XXI-C-1956 (Board's Exhibit No. 1-A-2) 362

Case No. XXI-C-1957 (Board's Exhibit No. 2-A-2) 383

Complaint:

Case No. XXI-C-1840 (Board's Exhibit No. 1-C) 245

Case No. XXI-C-1843 (Board's Exhibit No. 2-C) 262

Case No. XXI-C-1956 (Board's Exhibit No. 1-A-1) 357

Case No. XXI-C-1957 (Board's Exhibit No. 2-A-2) 378

Decision and Direction of Elections 77

Amendment to 124

Second Amendment to 128

Third Amendment to 134

Fourth Amendment to 138

Fifth Amendment to 145

Supplemental 224

Index Page

Decision and Certification of Representatives, Supplemental 187

Decision and Order:

Cases Nos. C-2003 and C-2024..... 330

Cases Nos. C-2050 and C-2051..... 454

Election Report:

Case No. R-1923..... 156

Case No. R-1924..... 160

Case No. R-1925..... 180

Case No. R-1926..... 199

Supplemental, Case No. R-1926..... 231

Exceptions to the Intermediate Report and Other Parts of the Record and Proceeding:

Of Hearst Publications, Inc. (Los Angeles Evening Herald and Express Dept.).... 316

Of Hearst Publications, Inc. (Los Angeles Examiner Dept.) 417

Of Stockholders Publishing Company, Inc. 442

Of The Times-Mirror Company..... 303

Fifth Amendment to Decision and Direction of Elections 145

Fourth Amendment to Decision and Direction of Elections 138

Index **Page**

Intermediate Report:

Cases Nos. XXI-C-1840 and 1843..... 287

Cases Nos. XXI-C-1956 and 1957..... 401

Letter dated December 21, 1934 addressed to David Bell signed Dain Sturges on Letterhead of Downtown Business Men's Assn. (Herald Exhibit No. 2)..... 483

Letter dated December 31, 1934, on letterhead of J. Allen Frankel to Los Angeles Evening Herald and Express (Herald Exhibit No. 4) 486

Letter dated May 12, 1941, to National Labor Relations Board, from Stockholders Publishing Company, Inc., Challenging Votes of All Newsboys Which May Be Cast at Election on May 14, 1941..... 148

Letter on Letterhead of Downtown Business Men's Assn. dated January 3, 1935, David Bell from Dain Sturges (Herald Exhibit No. 3) 485

List Containing "Names of Persons and Locations Where Engaged in Selling Los Angeles Times (As of May 1, 1940)" (Times-Miror Exhibit No. 6)..... 504

Motion to Consolidate Nos. 10112, 10114, 10115 and 10123 (CCA)..... 1837

Index **Page**

Motion to Dismiss Amended Petition for Investigation and Certification of Representatives, Case No. XXI-R-928 (Board's Exhibit 1-CC) 35

Motion to Dismiss Complaint:

Case No. XXI-C-1840 (Board's Exhibit No. 1-G) 251

Case No. XXI-C-1843 (Board's Exhibit 2-G) 267

Case No. XXI-C-1956 (Board's Exhibit 1-C) 365

Case No. XXI-C-1957 (Board's Exhibit 2-E) 384

Motion to Dismiss Petition for Investigation and Certification of Representatives:

Case No. XXI-R-927 (Board's Exhibit No. 1-FF) 42

Case No. XXI-R-1062 (Board's Exhibit 1-R) 24

Case No. XXI-R-1084 (Examiner's Exhibit No. 2) 501

Note dated January 21, 1939, addressed to "Dear Nick" and signed "Mae Williams", (Herald Exhibit No. 6) 487

Index Page

Notice of Filing Petition for Review and Affidavit of Service:

CCA No. 10112.....1727

CCA No. 10114.....1754

CCA No. 10115.....1795

CCA No. 10123.....1823

Notice of Hearing, Amended, dated May 15, 1940 (Board Exhibit 1-M)..... 20

Notice of Hearing, dated April 12, 1940 (Board Exhibit 1-I)..... 15

Notice of Special Meeting of the Herald and News Unit in Case No. XXI-R-927 (Stockholder Exhibit No. 3)..... 493

Objections Not Filed..... 236

Objections, Report on

Case No. R-1924 (XXI-R-928)..... 179

Case No. R-1923 (XXI-R-927)..... 179

Case No. R-1925 (XXI-R-1062)..... 186

Case No. R-1926 (XXI-R-1084)..... 220

Objections to Election Report and the Conducting Thereof:

Case No. R-1923..... 165

Case No. XXI-R-928..... 168

Index **Page**

Objections to Election Report and the Conducting Thereof (Continued):

Case No. R-1925 183

Exhibit B—Map depicting Geographical Proximity of Nearby Areas to Los Angeles where paper is sold 186a

Case No. R-1926 209

Objections to Validity of Direction of Elections and Exceptions to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in said Elections:

Case No. XXI-R-1062 (Times Unit) 150

Case No. XXI-R-1084 (Los Angeles Examiner Unit) 152

Order Consolidating Cases Nos. XXI-C-1840 and 1843 (Board Exhibit 1-B) 244

Order Consolidating Cases Nos. XXI-C-1956 and 1957 (Board Exhibit 1-B) 363

Order Denying Motion of Stockholders Publishing Company, Inc. to Reopen Proceedings and for Modification of Decision 131

Order Directing Investigation and Hearing in Case No. XXI-R-927 (Board Exhibit 1-E) .. 8

Order Directing Investigation and Hearing and Consolidating Cases Nos. XXI-R-927, 928 and 1062 (Board's Exhibit 1-H) 14

Index Page

Order Directing Investigation and Hearing and Consolidating Cases Nos. XXI-R-927, 928, 1062 and 1084 (Board Exhibit 1-T) 28

Order Overruling "Objections to Validity of Direction of Elections and Exceptions to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in Said Election":

Case No. R-1925 164

Case No. R-1926 178

Order Respecting Designation for Printed Record and Filing of Briefs (CCA) 1839

Petition for Investigation and Certification of Representatives:

Case No. XXI-R- 927 (Board Exhibit 1-B) 1

Case No. XXI-R- 928 (Board Exhibit 1-C) 3

Case No. XXI-R-1062 (Board Exhibit 1-G) 11

Case No. XXI-R-1084 (Board Exhibit 1-L) 18

Index

Page

Petition, Amended, for Investigation and Certification of Representatives:

Case No. XXI-R- 927 (Board Exhibit 1-D) 5

Case No. XXI-R- 928 (Board Exhibit 1-F) 9

Case No. XXI-R-1062 (Board Exhibit 1-P) 21

Petition, Second Amended, for Investigation and Certification of Representatives:

Case No. XXI-R- 927 (Board Exhibit 1-Y) 30

Case No. XXI-R- 928 (Board Exhibit 1-BB) 32

Petition for Review of Final Order of National Labor Relations Board:

CCA No. 10122 1699

CCA No. 10114 1738

CCA No. 10115 1764

CCA No. 10123 1806

Photographs, Times-Mirror Exhibits Nos. 3, 4 and 5 496-498

Report, Intermediate:

Cases Nos. XXI-C-1840 and 1843 287

Cases Nos. XXI-C-1956 and 1957 401

Index Page

Report on Objections:

Case No. R-1923 (XXI-R- 927)..... 179

Case No. R-1924 (XXI-R- 928)..... 179

Case No. R-1925 (XXI-R-1062)..... 186

Case No. R-1926 (XXI-R-1084)..... 220

Rule 8.19 of the Rules Under the California Unemployment Insurance Act (Herald Exhibit No. 7)..... 488

Second Amended Petition for Investigation and Certification of Representatives:

Case No. XXI-R- 927 (Board Exhibit 1-Y)..... 30

Case No. XXI-R- 928 (Board Exhibit 1-BB)..... 32

Social Security Tax Unit Ruling No. 64 (Herald Exhibit No. 8)..... 489

Statement of Points on Which Petitioner Will Rely on Petition for Review:

CCA No. 10112.....1735

CCA No. 10114.....1761

CCA No. 10115.....1801

CCA No. 10123.....1830

Statement of Points, (CCA) Cases Nos. 10112, 10114, 10115 and 10123.....1834

Index **Page**

Stipulations:

as to Meaning of Certain Terms Used in the Amended Petition, Case No. XXI-R-928 (Board Exhibit 8)..... 58

re Amendment to National Labor Relations Board's Original Decision and Direction of Elections..... 132

re Applicability of Motion to Dismiss and Answer to Amended Petition for Investigation and Certification of Representatives, Case No. XXI-R-1062 (Board Exhibit 1-DD)..... 39

re Los Angeles Evening Herald and Express (Board's Exhibit 4)..... 280

re Los Angeles Examiner Department of Hearst Publications, Inc. (Board Exhibit 4)..... 393

re Stockholders Publishing Co., Inc. (Board Exhibit No. 5)..... 397

re Testimony of Dutton O'Brien in Case No. XXI-R-927 (Stockholders Exhibit No. 4)..... 494

re Testimony of William J. Harrison (Herald Exhibit No. 9)..... 479

Supplemental Decision and Certification of Representatives..... 187

Index Page

Supplemental Decision and Direction 224

Supplemental Election Report in Case No. R-1926 231

Table Showing Percentage of Daily Out of State Sales to Total Daily Average Net Paid Circulation (Times-Mirror Exhibit No. 7) .. 522

Third Amendment to Decision and Direction of Elections 134

Testimony 523

Exhibits for Herald-Express:

1—Answer to Amended Petition for Investigation and Certification of Representatives, Case No. XXI-R-928 490

2—Letter Dated December 21, 1934, Addressed to David Bell, Signed Dain Sturges on Letterhead of Downtown Business Men's Assn.. 483

3—Letter on Letterhead of Downtown Business Men's Assn., Dated January 3, 1935, David Bell from Dain Sturges 485

4—Letter Dated December 31, 1934, on Letterhead of J. Allen Frankel to Los Angeles Evening Herald and Express 486

Index Page

Exhibits for Herald-Express (Continued):
5—Bill of Sale, Dated January 21, 1939, Mae Williams to Henry Powers 481
6—Note Dated January 21, 1939, Addressed to "Dear Nick" and Signed "Mae Williams"..... 487
7—Rule 8.19 of the Rules Under the California Unemployment Insurance Act 488
8—Social Security Tax Unit Ruling No. 64 489
9—Stipulation re Testimony of William J. Harrison..... 479
Exhibits for Los Angeles Examiner:
1—Answer to Amended Petition for Investigation and Certification of Representatives, Case No. XXI-R-1084 499
2—Motion to Dismiss Petition for Investigation and Certification of Representatives, Case No. XXI-R-1084 501
Exhibits for National Labor Relations Board Cases R-927-928-1062 and 1084:
1-B—Petition for Investigation and Certification of Representatives in Case No. R-927..... 1

Index

Page

Exhibits for National Labor Relations Board Cases R-927-928-1062 and 1084 (Continued):

1-C—Petition for Investigation and Certification of Representatives in Case No. R-928 3

1-D—Amended Petition for Investigation and Certification of Representatives in Case No. XXI-R-927 5

1-E—Order Directing Investigation and Hearing in Case No. XXI-R-927 8

1-F—Amended Petition for Investigation and Certification of Representatives in Case No. XXI-R-928 9

1-G—Petition for Investigation and Certification of Representatives in Case No. XXI-R-1062 11

1-H—Order Directing Investigation and Hearing and Consolidating Cases Nos. XXI-R-927, 928 and 1062 14

1-I—Notice of Hearing in Consolidated Cases 15

1-L—Petition for Investigation and Certification of Representatives in Case No. XXI-R-1084 18

Index

Page

Exhibits for National Labor Relations Board Cases R-927-928-1062 and 1084 (Continued):

1-M—Amended Notice of Hearing... 20

1-P—Amended Petition for Investigation and Certification of Representatives in Case No. XXI-R-1062 21

1-R—Motion to Dismiss Petition for Investigation and Certification of Representatives, Case No. XXI-R-1062 24

1-S—Answer to Petition for Investigation and Certification of Representatives, Case No. XXI-R-1062 26

1-T—Order Directing Investigation and Hearing and Consolidating Cases Nos. XXI-R-927, 928, 1062 and 1084 28

1-Y—Second Amended Petition for Investigation and Certification of Representatives in Case No. XXI-R-927 30

1-BB—Second Amended Petition for Investigation and Certification of Representatives, Case No. XXI-R-928 32

Index Page

Exhibits for National Labor Relations Board Cases R-927-928-1062 and 1084 (Continued):

1-CC—Motion to Dismiss Amended Petition for Investigation and Certification of Representatives, Case No. XXI-R-928 35

1-DD—Stipulation re Applicability of Motion to Dismiss and Answer to Amended Petition for Investigation and Certification of Representatives, Case No. XXI-R-1062 39

1-FF—Motion to Dismiss Petition for Investigation and Certification of Representatives, Case No. XXI-R-927 42

1-GG—Answer of Stockholders Publishing Company, Inc. to Second Amended Petition for Investigation and Certification of Representatives 46

2—Agreed Statement of Facts in Case No. XXI-R-928 49

2a—Amendment to Agreed Statement of Facts in Case No. XXI-R-928 57

3—List of Check Men Wholesaling Paper Who Received Checks from Evening Herald-Express... 616

Index Page

Exhibits for National Labor Relations Board Cases R-927-928-1062 and 1084 (Continued):

5-A—Constitution of the Newsboys L. I. Union No. 75 as of December 5 869

7—Herald and Express Cardboard Circular 755

8—Stipulation as to Meaning of Certain Terms Used in the Amended Petition, Case No. XXI-R-928... 58

9—List Prepared Giving Names and Addresses and Amount Paid to Each of the Group of Wholesalers or Check Men.....1091

10—Agreed Statement of Facts in Case No. XXI-R-927..... 60

11—Photograph of Racks Furnished by Stockholders Publishing Company to Newsboys.....1274

12—Photograph Picturing Racks Furnished by Times to Newsboys....1165

13—Photograph Showing Change Aprons Furnished to Newsboys by Times 1168

14—Agreed Statement of Facts, Case No. XXI-R-1062 64

Index Page

Exhibits for National Labor Relations Board Cases R-927-928-1062 and 1084 (Continued):

15—Letter to L. A. Times, June 29, 1930, from Newsboys L. I. Union No. 75 C. I. O., Signed Art Page.1300

16—Photostat Showing Change Apron Furnished by Los Angeles Examiner to Newsboys.....1369

18—Agreed Statement of Facts, Case No. XXI-R-1084 68

19—Letter to A. F. Rogan, Business Manager, L. A. Examiner, Nov. 9, 1939, from L. A. Newsboys C. I. O. L. I. Union No. 75, Signed R. Eley, Acting Secretary.....1400

Exhibits for National Labor Relations Board in Cases XXI-C-1840 and 1843:

1-A—Charge, Case No. XXI-C-1840. 242

1-B—Order Consolidating Cases, Nos. XXI-C-1840 and 1843..... 244

1-C—Complaint in Case No. XXI-C-1840 245

1-G—Motion to Dismiss Complaint, Case No. XXI-C-1840..... 251

Index Page

Exhibits for National Labor Relations Board in Cases XXI-C-1840 and 1843 (Continued):

1-H—Answer of Hearst Publications, Inc. (Los Angeles Evening Herald and Express Dept.), Case No. XXI-C-1840 254

2-A—Charge, Case No. XXI-C-1843. 260

2-B—Order Consolidating Cases Nos. 1840 and 1843.....1648

2-C—Complaint in Case No. XXI-C-1843 262

2-G—Motion to Dismiss Complaint, Case No. XXI-C-1843..... 267

2-H—Answer of the Times-Mirror Company, Case No. XXI-C-1843. 269

4—Stipulation re Los Angeles Evening Herald and Express Case No. XXI-C-1840 280

5—Agreed Statement of Facts, Case No. XXI-C-1843 283

Exhibits for National Labor Relations Board in Cases Nos. 1956 and 1957:

1-A-1—Complaint, Case No. XXI-C-1956 357

1-A-2—Charge, Case No. XXI-C-1956 362

Index Page

Exhibits for National Labor Relations Board in Cases Nos. 1956 and 1957 (Continued):

1-B—Order Consolidating Cases Nos. XXI-C-1956 and 1957..... 363

1-C—Motion to dismiss Complaint, Case No. XXI-C-1956..... 365

1-D—Answer of Hearst Publications, Inc. (L. A. Examiner Dept.) Case No. XXI-C-1956)..... 369

2-A-1—Complaint, Case XXI-C-1957 378

2-A-2—Charge, Case XXI-C-1957.. 383

2-E—Motion to Dismiss Complaint, Case No. XXI-C-1957..... 384

2-F—Answer of Stockholders Publishing Company to Complaint, Case No. XXI-C-1957..... 387

4—Stipulation re Examiner Dept. of Hearst Publications Case No. XXI-C-1956 393

5—Stipulation re Stockholders Publishing Company, Case No. XXI-C-1957 397

Exhibits for Stockholders Publishing Company:

3—Notice of Special Meeting of the Herald and News Unit..... 493

4—Stipulation re Testimony of Dutton O'Brien..... 494

Index Page

Exhibits for Times-Mirror Company:

3—Photograph 496

4—Photograph 497

5—Photograph 498

6—List Containing "Names of Persons and Locations Where Engaged in Selling Los Angeles Times (As of May 1, 1940)".... 504

7—Table Showing Percentage of Daily Out of State Sales to Total Daily Average Net Paid Circulation 522

Witnesses for Evening Herald and Express:

Bell, Davey
—direct 917, 919

Bryant, Ed
—direct 921
—cross 923
—redirect 927, 929

Comorre, Patrick
—direct 998
—cross (Mr. Mouritsen) 1005
—cross (Mr. Binford) 1010

Epstein, Solly
—direct 975
—cross 979

Index Page

Witnesses for Evening Herald and Express (Continued):

Gallagher, John J.
—direct 939
—cross 941
—redirect 943
—recross 944

Harrison, William J.
—direct 1030
—cross 1041
—recross 1051

Hutchison, George E.
—direct 1145

Klein, Morris
—direct 981
—cross 982
—redirect 984
—recross 984

Newman, Milton
—direct 945
—cross 947
—redirect 957

Nickerson, Maurice F.
—direct 1024
—cross 1026
—redirect 1026, 1028
—recross (Mr. Mouritsen) .1028, 1029
—recross (Mr. Binford).....1029

Index Page

Witnesses for Evening Herald and Express (Continued):

Norton, Gordon
—direct 1013
—cross 1018
—redirect 1023

Plotkin, Harry
—direct 986
—cross 995
—redirect 996

Schullman, Willie
—direct 930
—cross 937

Woods, Joe
—direct 958
—cross (Mr. Mouritsen) 972
—cross (Mr. Hall)..... 973

Witnesses for Los Angeles Examiner:

Hampson, Arthur J.
—direct 1564
—cross 1572
—redirect 1573, 1574, 1575
—recross 1573, 1574

Pierce, Abraham
—direct 1529
—cross 1537
—redirect 1551

Index Page

Witnesses for Los Angeles Examiner (Continued):

Volanty, Nicholas
—direct 1514
—cross 1519
—redirect 1526
—recross 1527

Weisbecker, John G.
—direct 1555
—cross 1557
—recross 1562

Witnesses for the National Labor Relations Board:

Alley, Gene LeRoy
—direct 745
—recalled, direct 816
—cross (Mr. Compton)..... 822
—cross (Mr. Binford)..... 824

Apice, James V.
—direct 1117

Ash, Thomas Hilliard
—direct 1123

Barrett, Mike
—direct 848, 1423
—cross (Mr. Compton)..... 849
—cross (Mr. Binford)..... 851
—redirect 852, 1430
—cross (Mr. Hall) 1424

Index Page

Witnesses for the National Labor Relations Board (Continued):

Bell, Dave
—direct 584

Brewster, Albert W.
—direct 639, 654
—cross (Mr. Compton)..... 655
—cross (Mr. Binford)..... 656
—redirect 656

Buhl, Harry Louis
—rebuttal, direct 1620
—cross 1622
—redirect 1622, 1624
—recross 1623

Cohen, Julius J.
—direct 1154
—recalled, direct 1169
—cross 1171
—recalled, redirect 1178

Cole, Darral
—direct 1445
—cross 1451

Comorre, Pat
—direct 658
—redirect 673
—recalled, direct 853, 857, 1148, 1506, 1639

Index **Page**

Witnesses for the National Labor Relations Board (Continued):

Comorre, Pat (Continued):

—cross 862
—redirect 863, 865
—direct (Hearing Nov. 10, 1941) 1652
—direct (Hearing Dec. 16, 1941) 1676

Deering, John

—direct 1494
—rebuttal, direct 1624
—cross 1626

Dyer, Max Robert

—direct 1280
—cross 1286, 1294
—redirect 1291

Eley, Roy.

—direct 1181
—cross (Mr. Yoakum) 1192
—cross (Mr. Cosgrove) 1210
—redirect 1210
—recalled, direct 1301, 1308, 1310, 1505, 1508
—rebuttal, direct 1576
—cross 1577

Index Page

Witnesses for the National Labor Relations Board (Continued):

Faber, Sid
—direct 714
—cross (Mr. Compton)..... 718
—cross (Mr. Binford)..... 721
—redirect (Mr. Mouritsen)..722, 724
—redirect (Mr. Binford)..... 723
—recross 726

Fields, John Francis
—direct 1249
—cross (Mr. Yoakum).....1254, 1278
—cross (Mr. Compton)....1275, 1279
—cross (Mr. Binford).....1278, 1279
—redirect 1271
—recross 1275
—recalled, direct 1329
—recross 1333

France, Louis Kenneth
—direct 705
—cross 710
—redirect 711, 713
—recross 711

Georgon, Gus
—direct 1053
—cross 1057

Index Page

Witnesses for the National Labor Relations Board (Continued):

Gish, Harry Thomas
—direct 739
—cross (Mr. Compton)..... 741
—cross (Mr. Binford)..... 743
—redirect 744

Gratz, Jake M.
—direct 637

Hampson, Arthur J.
—direct 1362

Harrison, William J.
—direct 544
—cross 582
—recalled, direct 604, 635

Jackson, William
—direct 1441

Johnson, Carl Leslie
—rebuttal, direct 1614
—cross 1616
—redirect 1618

Kadesh, David
—direct 793
—redirect 804, 810, 814
—recross (Mr. Compton).....804, 812
—recross (Mr. Binford).....807, 814

Index Page

Witnesses for the National Labor Relations Board (Continued):

Kahn, Sam
—direct 896
—cross (Mr. Compton)..... 904
—cross (Mr. Binford)..... 908
—cross (Mr. Hamblin)..... 910
—redirect 909, 913

Latham, Ernie James
—direct 1453
—cross 1471

Marx, Raymond F.
—direct 1150
—cross 1153

McKinney, Thomas
—direct 1179

Moore, Isaiah Jacob
—direct 1125
—cross 1126
—redirect 1128

Murray, Sidney Glen
—direct 1113

Navarro, Gilbert
—direct 1432

Index Page

Witnesses for the National Labor Relations Board (Continued):

Nixon, Grover Cleveland
—rebuttal, direct 1601
—cross 1609
—redirect 1611
—recross 1612

Norton, Gordon F.
—direct 608
—cross (Mr. Compton).....630, 631
—cross (Mr. Binford)..... 631
—redirect 634
—recalled, direct 1064

Nation, Arthur Floyd
—rebuttal, direct 1585
—cross 1590

O'Brien, Dutton F.
—direct 1079

Patch, Edward
—direct 1313
—cross (Mr. Cosgrove).....1317
—cross (Mr. Yoakum).....1322
—redirect 1327

Plotkin, Harry
—direct 680
—cross 699
—redirect 704

Index

Page

Witnesses for the National Labor Relations Board (Continued):

Relish, Harry
—direct 727
—cross 736
—redirect 738

Roberts, John A.
—direct 1211
—cross 1226

Roth, Joe
—direct 875
—cross 878

Sanchez, Celestino
—direct 1477
—cross 1487
—redirect 1491

Schwartz, Louis
—direct 866

Seebolt, William H.
—direct 1373
—cross 1386
—redirect 1397
—recross 1398

Seklemian, Charles
—direct 1403
—cross 1412

Index **Page**

Witnesses for the National Labor Relations Board (Continued):

Siegel, Harry
—rebuttal, direct 1627
—cross 1629
—redirect 1632

Smith, Edward Victor
—direct 1108
—cross 1110
—redirect 1112

Smith, Frank Benjamin
—direct 1097
—cross 1100
—redirect 1106

Smith, Robert L.
—direct 1065

Spampinato, Philip
—direct 830
—cross (Mr. Compton) 837
—cross (Mr. Binford) 841
—redirect 846
—recross 847

Spillers, Charles C.
—direct 879
—cross (Mr. Compton) 885
—cross (Mr. Binford) 887
—redirect 891
—recross 894

Index Page

Witnesses for the National Labor Relations Board (Continued):

Steuart, Arthur
—direct 746
—cross (Mr. Compton) 767
—cross (Mr. Binford) 774
—redirect 778, 780, 782, 791
—recross (Mr. Compton) .779, 780, 783
—recross (Mr. Binford) 788

Tellis, Philip Joseph
—direct 1243
—cross 1244
—redirect 1248

Weisbacker, John C.
—direct 1349

Woods, Joe
—direct 596

Witnesses for Stockholders Publishing Company:

Comorre, Patrick
—direct 1131
—cross 1138

O'Brien, Dutton F.
—direct 1129

Smith, Robert L.
—direct 1635
—cross 1636

Index Page

Witnesses for Times-Mirror:

Marx, Raymond F.

—direct 1343
—cross 1345
—redirect 1345
—recross 1345
—recalled, direct 1593

Nathan, Albert

—direct 1295

Proceedings in U. S. C. C. A. Ninth Circuit 1843

Opinion, Stephens, J 1843

Dissenting opinion, Denman, J 1851

Decree—Cause No. 10112 1852

Decree—Cause No. 10114 1853

Decree—Cause No. 10115 1853

Decree—Cause No. 10123 1854

Clerk's certificate 1854

Orders allowing certiorari 1855

BOARD'S EXHIBIT No. 1-B

United States of America

Before the National Labor Relations Board

Twenty-first Region

Case No. R-927

240 inv.

In the matter of LOS ANGELES EVENING NEWS and LOS ANGELES NEWSBOYS L. I. U. No. 75, C. I. O.

Petitioner.

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name of Employer—Los Angeles Evening News.

Address—For. 12th and Los Angeles Street, Los Angeles, California.

General nature of business—Publishers.

Approximate total number of employees—665.

Description of the bargaining unit which petitioner claims is appropriate—Newsboys who sell papers at main spots, full time corners, and check men, within city of Los Angeles.

Approximate number of employees in such unit—240. Classification of employees in such unit, giving approximate number of employees in each department or class—(as above).

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—190.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—none.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: Company refuses to bargain with representative until election is held to determine whether union represents majority.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS
LOCAL IND. UNION, No. 75,
CIO
By: PAT COMORRE
Room 304, 212 W. 3rd Street,
Los Angeles, Cal.
Mu. 5747

Subscribed and sworn to before me this 18th day of April, 1939 at Los Angeles, California.

GEORGE D. McKAY,
Field Examiner
National Labor Relations Board
U. S. Post Office & Court House Bldg.
Los Angeles, California

BOARD'S EXHIBIT NO. 1-C

United States of America

Before the National Labor Relations Board
Twenty-first Region

Case No. XXIR928

200 inv.

In the matter of LOS ANGELES EVENING HERALD & EXPRESS and LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, CIO.

Petitioner.

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name of employer—Los Angeles Evening Herald & Express.

Address—1243 Trenton Street, Los Angeles, Calif.

General nature of business—Publishers.

Approximate total number of employees—1040. Description of the bargaining unit which petitioner claims is appropriate—Newsboys who sell papers at main spots, full time corners, and check men within the city limits of Los Angeles, California.

Approximate number of employees in such unit—200. Classification of employees in such unit, giving approximate number of employees in each department or class—(same as above).

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—190.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: Company refuses to bargain with representative until election is held to determine whether union represents majority.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, CIO

By: PAT COMORRE

Pat Comorre

Room 304, 212 West 3rd Street, Los Angeles, Cal.

Mu. 5747

Subscribed and sworn to before me this 18th day of April, 1939 at Los Angeles, California.

GEORGE D. McKAY,

Field Examiner

National Labor Relations Board

U. S. Post Office & Court House Bldg.

Los Angeles, California

BOARD'S EXHIBIT No. 1-D

United States of America

Before the National Labor Relations Board

Twenty-first Region

Case No. XXIR927

240 inv.

In the matter of STOCKHOLDERS PUBLISHING COMPANY, INC. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, CIO,

Petitioner.

AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name of employer—Stockholders Publishing Company, Inc.

Address—12th and Los Angeles Streets, Los Angeles, California.

General nature of business—Publishers.

Approximate total number of employees—665. Description of the bargaining unit which petitioner claims is appropriate—Newsboys who sell papers at main spots, full time corners, and check men, within city of Los Angeles.

Approximate number of employees in such unit—240. Classification of employees in such unit, giving approximate number of employees in each department or class—(as above).

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—190.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: Company refuses to bargain with representative until election is held to determine whether union represents majority.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS
LOCAL INDUSTRIAL UNION No. 75, CIO
By: PAT COMORRE
G. ALLEY
Room 304, 212 W. 3rd Street
Los Angeles, Calif.
MU. 5747

Subscribed and sworn to before me this 12th day of June, 1939 at Los Angeles, California.

GEORGE D. McKAY,
Field Examiner
National Labor Relations Board
U. S. Post Office & Court House Bldg.
Los Angeles, California

BOARD'S EXHIBIT No. 1-E

NLRB-90

United States of America
Before the National Labor Relations Board

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 31st day of July, 1939.

Present:

J. WARREN MADDEN, Chairman
EDWIN S. SMITH

Case No. XXI-R-927

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC., and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75; CIO.

ORDER DIRECTING INVESTIGATION AND HEARING

A petition having been filed in this matter for an investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, and the Board having considered same and being advised in the premises and it appearing to the Board that a question affecting commerce concerning the representation of employees has arisen,

It Is Hereby Ordered that the Regional Director for the Twenty-first Region conduct an investigation and provide for an appropriate hearing upon

due notice, pursuant to Section 9(c) of the National Labor Relations Act and Article III, Section 3 of the Rules and Regulations—Series 2 of the National Labor Relations Board, and report to the Board regarding such investigation and hearing.

By direction of the Board.

[Seal] NATHAN WITT,
Secretary.

BOARD'S EXHIBIT No. 1-F

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXIR928

200 inv.

In the matter of HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, CIO, Petitioner.

AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name and Address of employer—Hearst Publications Incorporated, 410 Hearst Building, San Francisco, Calif. (Los Angeles Evening Herald &

Express Dept., 1243 Trenton St., Los Angeles, Calif.)

General nature of business—Publishers.

Approximate total number of employees—1040. Description of the bargaining unit which petitioner claims is appropriate—Newsboys who sell papers at main spots and check men within the City Limits of Los Angeles, California.

Approximate number of employees in such unit—230.

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—210.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: Company refuses to bargain with representative until election is held to determine whether union represents majority.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, CIO
By: GENE ALLEY
Fin. Sec'y.
Room 304, 212 West 3rd St., Los Angeles, Calif., MU 5747

Subscribed and sworn to before me this 5th day of February, 1940 at Los Angeles, California.

JAMES C. CLARK,
Field Examiner
21st Region,
National Labor Relations Board
808 U. S. Post Office & Court House Bldg.

BOARD'S EXHIBIT No. 1-G

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXIR1062

280 inv.

In the matter of TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL No. 75, C.I.O., Petitioner.

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name of employer—Times Mirror Co.

Address—2nd and Spring, Los Angeles, Calif.

General nature of business—Publishing L. A. Times.

Approximate total number of employees—1200.

Description of the bargaining unit which petitioner claims is appropriate—all newsboys (called Hustlers) selling the Los Angeles Times in the City limits of Los Angeles.

Approximate number of employees in such unit—280.

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—195.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—none.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: The Times Mirror Co. has refused to bargain collectively with the Newsboys Union on the ground that newsboys are not employees within the meaning of the Act.

The undersigned further alleges that said ques-

tion concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES, NEWSBOYS
LOCAL No. 75
By: GENE ALLEY,
Gene Alley, Sec'y. Local No. 75
Room 304, 212 W. 3rd St.
Los Angeles, Cal.
MU 5747

Subscribed and sworn to before me this 18th day of March, 1940 at Los Angeles, Calif.

JAMES C. CLARK,
Field Examiner
National Labor Relations Board
U. S. Post Office & Court House Bldg.
Los Angeles, California

BOARD'S EXHIBIT NO. 1-H

United States of America
Before the National Labor Relations Board

Case No. XXI-R-927

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, Inc. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, CIO

Case No. XXI-R-928

HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, CIO

Case No. XXI-R-1062

TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL No. 75, C.I.O.

ORDER DIRECTING INVESTIGATION AND HEARING AND CONSOLIDATING CASES

A petition and amended petition, pursuant to Section 9(c) of the Act, having been filed in Case No. XXI-R-927, the Board, by Order duly made, having directed investigation and hearing in this case, a petition and amended petition having been duly filed in Case No. XXI-R-928, a petition having been duly filed in Case No. XXI-R-1062, and it appearing to the Board that questions affecting commerce have arisen in Cases Nos. XXI-R-928

and XXI-R-1062, the Board having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act,

It Is Hereby Ordered that the Regional Director for the Twenty-First Region conduct an investigation and provide for a hearing upon due notice, pursuant to Section 9(c) of the National Labor Relations Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 2, as amended, and report to the Board as to such investigation and hearing in Cases Nos. XXI-R-928 and XXI-R-1062, and

It Is Further Ordered, pursuant to Article III, Section 10(c)(2) of the said Rules and Regulations that Cases Nos. XXI-R-927, XXI-R-928, and XXI-R-1062 be, and they hereby are, consolidated.

Dated, Washington, D. C., March 27, 1940.

By direction of the Board:

BEATRICE M. STERN
Acting Secretary

BOARD'S EXHIBIT No. 1-I

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-927
Consolidated with

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. XXI-R-928

HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. XXI-R-1062

TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

NOTICE OF HEARING

There has heretofore been filed with the National Labor Relations Board, Twenty-first Region, petition and amended petitions by the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., alleging that a question affecting commerce has arisen concerning the representation of the employees of the above-named companies at Los Angeles, California, and requesting that, pursuant to authority granted in Section 9 (c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify the name or names of the representatives that have been designated or selected by such employees.

Copies of said petition and amended petitions are attached hereto.

It appearing to the National Labor Relations Board that a question affecting commerce has arisen concerning the representation of the employees of said companies,

You Are Hereby Notified that, pursuant to Section 9 (c) of the National Labor Relations Act, on the 16th day of May, 1940, at 9:30 o'clock in the forenoon, in Room 808, United States Postoffice and Courthouse, Temple and Spring Streets, Los Angeles, California, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 2—as amended, Article IV, Section 2, and Article III, Section 3, upon the question of representation affecting commerce which has arisen, at which time and place you shall have the right to appear, in person or otherwise, and give testimony.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 2—as amended, made and published by the National Labor Relations Board.

In Witness Whereof, the National Labor Relations Board has caused this, its Notice of Hearing, to be signed by the Regional Director for the Twenty-first Region on the 12th day of April, 1940.

[Seal] WALTER P. SPRECKELS

Walter P. Spreckels,
Regional Director, 21st Region
National Labor Relations Board
808 U.S. Postoffice & Courthouse
Los Angeles, California

BOARD'S EXHIBIT No. 1-L

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-1084
250 (inv.)

In the matter of HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT.) and NEWSBOYS L. I. UNION No. 75, CIO, Petitioner.

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name of employer—Hearst Publications, Incorporated (Los Angeles Examiner Department).

Address—1111 So. Broadway, Los Angeles, California.

General nature of business—Newspaper Publishing.

Approximate total number of employees_____.

Description of the bargaining unit which petitioner claims is appropriate All newsboys engaged in the street sale of the Los Angeles Examiner at established spots and corners within the City of Los Angeles, California, excluding bootjackers, temporary and casual newsboys, and newsboys who sell Sunday copies of the Los Angeles Examiner only.

Approximate number of employees in such unit—310.

Number or percentage of employees in such unit

who have designated or selected petitioner to be their representative for collective bargaining—250.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: The Union has requested bargaining conferences with representatives of the Los Angeles Examiner, which requests have been ignored by the Los Angeles Examiner.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

NEWSBOYS L. I. UNION
No. 75, CIO
GENE ALLEY
Gene Alley
Financial Secretary
Room 304, 212 West 3rd St.
Los Angeles
MU 5747

Subscribed and sworn to before me this 10th day of May, 1940 at Los Angeles Calif

ROGER G. McGUIRE,
Field Examiner
NATIONAL LABOR RELATIONS BOARD
U. S. Post Office & Court House Bldg.
Los Angeles, California

BOARD'S EXHIBIT No. 1-M

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-927
consolidated with

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. XXI-R-928

HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. XXI-R-1062

TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

AMENDED NOTICE OF HEARING

Please Take Notice that the date of the hearing in the above entitled matters is hereby enlarged to June 10, 1940, at the same time and place as specified in the Notice of Hearing heretofore issued.

[Seal] WALTER P. SPRECKELS
Walter P. Spreckels,
Regional Director,
21st Region
National Labor Relations Board
808 U.S. Postoffice & Courthouse Bldg.,
Los Angeles, California

Dated: May 15, 1940

BOARD'S EXHIBIT No. 1-P

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-1062
250 inv.

In the matter of THE TIMES-MIRROR COMPANY and NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, LOS ANGELES, CALIFORNIA, C.I.O., Petitioner.

AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name of employer—The Times-Mirror Company.

Address—Second and Spring Streets, Los Angeles, California.

General nature of business—Newspaper publisher.

Approximate total number of employees—1200.

Description of the bargaining unit which petitioner claims is appropriate—All newsboys (called hustlers) selling the Los Angeles Times within the city limits of Los Angeles and Glendale, California, except temporary newsboys, casual newsboys, and newsboys who sell Sunday only copies of the Times.

Approximate number of employees in such unit—250.

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—195.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: The Times-Mirror Company has refused to bargain collectively with the representatives of petitioning union because it contends that newsboys are not employees of the Company within the meaning of the Act.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, LOS ANGELES, CALIFORNIA, C.I.O.

By: GENE ALLEY,
Gene Alley,
Secretary,
212 W. Third St.,
Los Angeles, Calif.
Mutual 5747

Subscribed and sworn to before me this 4th day of June, 1940 at 808 U. S. Post Office & Court House Bldg. at Los Angeles, California.

By: FRANK A. MOURITSEN,
Frank A. Mouritsen, Attorney
National Labor Relations Board
U. S. Post Office & Court House Bldg.
Los Angeles, California.

BOARD'S EXHIBIT No. 1-R

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-1062

Consolidated with XXI-R-927 and XXI-R-928.

In the Matter of THE TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

MOTION TO DISMISS PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT.

Comes now The Times-Mirror Co., a corporation, and severing itself from all other persons and appearing specially for the purpose of objecting to the jurisdiction of the National Labor Relations Board, moves to dismiss the Petition of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act, in so far as said petition pertains to The Times-Mirror Co.

Said motion is made on each and all of the following grounds:

1. No one of the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is an employee of The Times-Mirror Co.

2. Each and all of the newsboys (called Hustlers) selling the Los Angeles Times in the city limits of Los Angeles is and are independent contractors.

3. No question affecting commerce has arisen or can arise concerning the representation of the alleged employees (said Union members) of The Times-Mirror Co.

4. The Board has no jurisdiction over The Times-Mirror Co. or over the business conducted by it.

5. The relations of The Times-Mirror Co. with the alleged employees (said Union members) are not subject to the jurisdiction of the Board.

6. No claimed labor dispute between The Times-Mirror Co. and said alleged employees (said Union members) can affect commerce within the meaning of the National Labor Relations Act.

The right to make this motion or to object to any adverse ruling on the same shall not be deemed waived by The Times-Mirror Co. by any participation by it in the proceedings before the Trial Examiner or the Board; the movant relies upon Article III, Section 4, and Article II, Sections 14-18, inclusive, of Rules and Regulations, Series 2—as amended, of the National Labor Relations Board.

Dated: June 4, 1940.

COSGROVE & O'NEIL,
T. B. COSGROVE,
F. B. YOAKUM, Jr.;
By T. B. COSGROVE
Attorneys for
The Times-Mirror Co.

BOARD'S EXHIBIT No. 1-S

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-1062

Consolidated with XXI-R-927 and XXI-R-928

In the Matter of THE TIMES-MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.

ANSWER TO PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT.

Reserving all rights asserted under its motion filed concurrently herewith, The Times-Mirror Co., a corporation, for itself alone, files this its Answer to Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act.

1. Denies that The Times-Mirror Co. is the employer of the persons claimed to be represented by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.

2. Denies that any or "all newsboys (called Hustlers) selling the Los Angeles Times in the city limits of Los Angeles" is the appropriate bargaining unit.

3. Denies that "such unit" has 280 employees, or any employees, of The Times-Mirror Co. among

newsboys (called Hustlers) selling the Los Angeles Times in the city limits of Los Angeles.

4. Denies that the "number or percentage of employees in such unit who have designated or selected" said Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. "to be their representative for collective bargaining" is 195, or any other greater or lesser number.

5. Denies that The Times-Mirror Co. has refused to bargain with any group representing its employees, and alleges that said Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., does not represent a majority or any substantial fractional part of the newsboys (called Hustlers) selling the Los Angeles Times within the city limits of Los Angeles.

6. Denies that any question concerning the representation of said newsboys (called Hustlers) is a question affecting commerce within the meaning of the National Labor Relations Act.

Wherefore, The Times-Mirror Co. prays that the Petition of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act be dismissed.

COSGROVE & O'NEIL,
T. B. COSGROVE,
F. B. YOAKUM, JR.,
By T. B. COSGROVE,
Attorneys for The Times-Mirror Co.

(Duly Verified)

BOARD'S EXHIBIT No. 1-T

United States of America
Before the National Labor Relations Board

Case No. XXI-R-927

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC., and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, C. I. O.

Case No. XXI-R-928

HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL IND. UNION, No. 75, C. I. O.

Case No. XXI-R-1062

TIMES-MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL No. 75, C. I. O.

Case No. XXI-R-1084

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT) and NEWSBOYS L. I. UNION No. 75, C. I. O.

ORDER DIRECTING INVESTIGATION AND HEARING, AND CONSOLIDATING CASES

A petition and amended petition, pursuant to Section 9(c) of the Act, having been filed in Case No. XXI-R-927, the Board, by Order duly made,

having directed investigation and hearing in this case, a petition and amended petition having been duly filed in Case No. XXI-R-928, a petition having been duly filed in Case No. XXI-R-1062, the Board, by Order duly made, having directed investigation and hearing in Cases Nos. XXI-R-928 and XXI-R-1062 and having consolidated Cases Nos. XXI-R-927, XXI-R-928, and XXI-R-1062, and a petition having been duly filed in Case No. XXI-R-1084, and it appearing to the Board that questions affecting commerce have arisen in Case No. XXI-R-1084, and the Board deeming it necessary in order to effectuate the purposes of the Act,

It Is Hereby Ordered that the Regional Director for the Twenty-first Region conduct an investigation and provide for an appropriate hearing upon due notice, pursuant to Section 9(c) of the National Labor Relations Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 2, as amended, and report to the Board regarding such investigation and hearing in Case No. XXI-R-1084; and

It Is Further Ordered, pursuant to Article III, Section 10(c)(2) of the said Rules and Regulations that Case No. XXI-R-1084 be, and it hereby is, consolidated with Cases Nos. XXI-R-927, XXI-R-928, and XXI-R-1062.

Dated, Washington, D. C., June 5, 1940.

By direction of the Board:

NATHAN WITT,
Nathan Witt,
Secretary.

BOARD'S EXHIBIT No. 1-Y

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-927
240 inv.

In the matter of STOCKHOLDERS PUBLISHING COMPANY, INC., and NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, LOS ANGELES, CALIFORNIA, C. I. O., Petitioner.

SECOND AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT.

Name of employer, Stockholders Publishing Company, Inc.

Address, Twelfth and Los Angeles Streets, Los Angeles, California.

General nature of business, Newspaper publishing.

Approximate total number of employees 665. Description of the bargaining unit which petitioner claims is appropriate. All main spot newsboys, full time newsboys, and check men who are engaged to sell The News within the city limits of

Los Angeles, California, excluding bootjackers, temporary, casual, and part time newsboys.

Approximate number of employees in such unit, 240.

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining, 190.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit, None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: The Company refuses to bargain with representatives of Union because it contends newsboys are not employees within the meaning of the Act.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, LOS ANGELES, CALIFORNIA, C.I.O.

By: GENE ALLEY,

Gene Alley, Financial Secretary, 212 West 3rd St., Los Angeles, California. Mutual 5747.

Subscribed and sworn to before me this 6th day of June, 1940, at Los Angeles, Calif.

FRANK A. MOURITSEN,

Frank A. Mouritsen, Attorney National Labor Relations Board, U. S. Post Office & Court House Bldg., Los Angeles, California.

BOARD'S EXHIBIT No. 1-BB

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-928
220 inv.

In the matter of HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, LOS ANGELES, CALIFORNIA, C.I.O., Petitioner.

SECOND AMENDED INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT.

Name of employer, Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department).

Address 1243 Trenton Street, Los Angeles, Calif., and 410 Hearst Bldg., San Francisco, California.

General nature of business, Newspaper publishing.

Approximate total number of employees, 1040.

Description of the bargaining unit which petitioner claims is appropriate, All main spot newsboys, full time newsboys, and check men who are engaged to sell the Los Angeles Evening Herald & Express within the city limits of Los Angeles, California, excluding bootjacks, temporary, casual, and part time newsboys.

Approximate number of employees in such unit, 220.

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining, 210.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit, None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: The

Company refuses to bargain with representatives of Union because it contends newsboys are not employees within the meaning of the Act.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Subscribed and sworn to before me this 6th day of June, 1940, at Los Angeles, Calif.

FRANK A. MOURITSEN,
Attorney, National Labor Relations Board, U. S. Post Office & Court House Bldg., Los Angeles, California.

NEWSBOYS INDUSTRIAL UNION, No. 75, LOS ANGELES, CALIFORNIA, C.I.O.

By: GENE ALLEY,
Financial Secretary, 212 West 3rd St., Los Angeles, California. Mutual 5747.

BOARD'S EXHIBIT No. 1-CC

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-928
Consolidated with
Case No. XXI-R-927
and
Case No. XXI-R-1062

In the Matter of HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, CIO, Petitioner.

MOTION TO DISMISS AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9 (c) OF THE NATIONAL LABOR RELATIONS ACT.

Comes now the respondent, Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated, appearing for itself alone, specially and not generally and only for the purpose of this motion and for no other purpose whatsoever, and moves for dismissal of the petition filed herein upon each of the following grounds:

(1) That the National Labor Relations Board has no jurisdiction over respondent.

(2) That respondent is not engaged in com-

merce among the several states or between the District of Columbia or any territory of the United States and any state or other territory or between any foreign country or any state, territory or the District of Columbia or within the District of Columbia or any territory or between points in the same state or territory or any other state or territory or the District of Columbia or any foreign country, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

(3) That no member of the petitioner, to-wit, Los Angeles Newsboys Local Industrial Union No. 75, CIO, is an employee of this respondent, and; therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(4) That the persons alleged in said petition to be members of the unit described therein, to-wit, Newsboys who sell papers at main spots and checkmen within the city limits of Los Angeles, California, in so far as said news vending activities are concerned, are not employees of, nor is any one of them an employee of this respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(5) That no one of the persons designated in said petition as a member of the unit in said petition described is an employee of this respondent, and, therefore, the National Labor Relations Board

has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(6) That each one of the persons designated in said petition as a member of the unit in said petition described is, in the conduct of his news vending activities, an independent contractor or merchandiser, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(7) That each one of the persons designated in said petition as a member of the unit in said petition described is, in the conduct of his news vending activities, engaged solely in intra-state commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(8) That no one of the persons designated in said petition as a member of the unit in said petition described is, in the conduct of his news vending activities, engaged in interstate commerce or in any business activity having a close, intimate, substantial or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(9) That no refusal of this respondent to bargain with the representative of said petitioner can burden or obstruct commerce and such refusal cannot and has not led or tended to lead, and cannot and does not now and will not lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(10) That no cessation of the news vending activities of the persons designated in said petition as members of the unit described in said petition, or any of them, can or will burden or obstruct commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(11) That no cessation of the news vending activities of the persons designated in said petition as members of the unit described in said petition, or any of them, can or will lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(12) That the National Labor Relations Board has no jurisdiction over the relations of this respondent with the persons engaged in the independ-

ent business of vending the newspaper published by this respondent.

This motion is made by respondent in reliance upon the rights granted by Article II, Sections 14 to 18 inclusive, and Article III, Section 4, of Rules and Regulations, Series 2, as amended, of the National Labor Relations Board, and its right to make this motion, or to object to any ruling upon the same, shall not be deemed waived by the filing of an answer or by other participation by this respondent in the proceedings before the Trial Examiner or the Board.

Dated at Los Angeles, California, this 6th day of June, 1940.

FLINT & MacKAY.
By EDWARD L. COMPTON,
Attorneys for Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated.

BOARD'S EXHIBIT No. 1-DD

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-1062

Consolidated with XXI-R-927 and XXI-R-928

In the Matter of THE TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

STIPULATION RE APPLICABILITY OF MOTION TO DISMISS AND ANSWER TO AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES.

It Is Hereby Stipulated that the Motion to Dismiss Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act, filed herein by The Times-Mirror Co. on June 4, 1940, shall be deemed to have been made with respect to the Amended Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act, which Amended Petition was served on counsel for The Times-Mirror Co. on June 4, 1940, but subsequent to the filing by The Times-Mirror Co. of its aforesaid Motion to Dismiss.

It Is Further Stipulated that the Answer to Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act, filed herein by The Times-Mirror Co. on June 4, 1940, shall be deemed to have been filed with respect to the Amended Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act, which Amended Petition was served on counsel for The Times-Mirror Co. on June 4, 1940, but subsequent to the filing of its aforesaid Answer; and that the allegation in

the Amended Petition that the appropriate bargaining unit is "all newsboys (called Hustlers) selling the Los Angeles Times within the city limits of Los Angeles and Glendale, California, except temporary newsboys, casual newsboys, and newsboys who sell Sunday only copies of the Times" be deemed denied without necessity of filing formal Answer denying such allegation.

Dated: June 6, 1940.

WALTER SPRECKELS,
Walter Spreckels,
Regional Director Twenty-first Region, National Labor Relations Board.

FRANK A. MOURITSEN,
Frank A. Mouritsen,
Attorney, National Labor Relations Board.

COSGROVE & O'NEIL,

T. B. COSGROVE,

F. B. YOAKUM, JR.,

By F. B. YOAKUM, JR.,
Attorneys for The Times-Mirror Co.

BOARD'S EXHIBIT No. 1-FF

United States of America
Before the National Labor Relations Board
Twenty-First Region
Case No. XXI-R-927

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC., and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

MOTION TO DISMISS PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT.

Comes now Stockholders Publishing Company, Inc., a corporation, and appearing only specially, and for itself only, for the purposes of this Motion, and moves the Board to dismiss the petition aforesaid as to Stockholders Publishing Company, Inc. for lack of jurisdiction.

This motion is made on each and all of the following grounds:

That the National Labor Relations Board has no jurisdiction over Stockholders Publishing Company, Inc., for the following reasons:

1. That all newsboys selling newspapers for the Stockholders Publishing Company, Inc., in Los Angeles are independent contractors and that no one of said newsboys as such, is an employee of Stockholders Publishing Company, Inc.

2. That no question affecting commerce has arisen concerning or affecting the representation of employees of Stockholders Publishing Company, Inc.

3. That the relationship of the newsboys (the union members) with Stockholders Publishing Company, Inc., are not subject to the jurisdiction of the Board for the reason amongst others, that said union members are not employees of Stockholders Publishing Company, Inc., and that no labor dispute, therefore, between said Stockholders Publishing Company, Inc. and such alleged employees can affect commerce within the meaning of the National Labor Relations Act.

The right is at all times reserved by Stockholders Publishing Company, Inc. to participate in the proceedings aforesaid before the Examiner or the Board, without thereby waiving the right to rely on this Motion or to object to any adverse ruling which may be made thereupon, all in accordance with the rules and regulations as amended, of said Board.

Dated this 7th day of June, 1940.

BINFORD & BINFORD,

By HOWARD M. BINFORD,

Attorneys for Stockholders Publishing Company, Inc.

AFFIDAVIT OF SERVICE BY MAIL

(C. C. P. 1013a)

(Must be attached to original or a true copy of paper served)

Case No. XXI-R-927

State of California
County of Los Angeles—ss.

Howard M. Binford, being duly sworn, says, that affiant is a citizen of the United States, over 18 years of age, a resident of Los Angeles County and not a party to the within action. That affiant's business address is 606 So. Hill Street, Los Angeles, California. That affiant served a copy of the attached Motion to Dismiss Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act by placing said copy in an envelope addressed to Los Angeles Evening Herald & Express, Los Angeles Examiner, Times-Mirror Company, Frank A. Mouritsen, attorney for National Labor Relations Board, Newsboys Local Industrial Union No. 75, C. I. O. at their office address, which is 1243 Trenton Ave., L. A.—1111 So. Broadway, L. A.—202 W. 1st St., L. A.—U. S. Post Office & Courthouse Bldg., L. A.—212 West 3rd St., L. A., which envelope was then sealed and postage fully prepaid thereon, and thereafter was on June 7, 1940, deposited in the United States Post Office at Los Angeles, Calif. That there is delivery service by United States mail at the place

so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

HOWARD M. BINFORD.

Subscribed and sworn to before me June 7, 1940.

[Seal] V. I. MacMAHON,
Notary Public in and for the
County of Los Angeles,
State of California.

AFFIDAVIT OF SERVICE BY MAIL
(C. C. P. 1013a)

Case No. XXI-R-927

State of California
County of Los Angeles—ss.

Howard M. Binford, being duly sworn, says that affiant is a citizen of the United States, over 18 years of age, a resident of Los Angeles County and not a party to the within action. That affiant's business address is 606 So. Hill St., Los Angeles, Calif. That affiant served a copy of the attached Answer of Stockholders Publishing Company, Inc. to Second Amended Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act by placing said copy in an envelope addressed to Los Angeles Evening Herald & Express, Los Angeles Examiner, Times-Mirror Company, Frank A. Mouritsen, attorney for National Labor Relations Board, at their office address, which is Newsboys Local Industrial

Union No. 75, C. I. O., 1243 Trenton Ave., L. A.—1111 So. Broadway, L. A.—202 W. 1st St., L. A.—U. S. Post Office & Courthouse Bldg., L. A.—212 West 3rd St., L. A., which envelope was then sealed and postage fully prepaid thereon, and thereafter was on June 7, 1940, deposited in the United States Post Office at Los Angeles, Calif. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

HOWARD M. BINFORD.

Subscribed and sworn to before me June 7, 1940.

[Seal] V. I. MacMAHON,
Notary Public in and for the
County of Los Angeles,
State of California.

BOARD'S EXHIBIT No. 1-GG

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-927

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC., and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

ANSWER OF STOCKHOLDERS PUBLISHING COMPANY, INC. TO SECOND AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9 (c) OF THE NATIONAL LABOR RELATIONS ACT.

Comes now Stockholders Publishing Company, Inc., a corporation, appearing for itself alone and without waiving any rights claimed by it in its Motion filed herein, and answers the Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act, as follows, to-wit:

1. Stockholders Publishing Company, Inc. denies that the relation of employer and employee exists between it and the sundry persons claimed to be represented by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.

2. Denies that any appropriate bargaining unit can be established or has been established between all main spot newsboys, full time newsboys, and check men who are engaged to sell The News within the city limits of Los Angeles, California, excluding bootjackers, temporary, casual, and part time newsboys, and Stockholders Publishing Company, Inc.

3. Denies that there are 240 employees or any employees of Stockholders Publishing Company, Inc., in such unit.

4. Denies that the "number or percentage of employees in such unit who have designated or selected petition to be their representative for collective bargaining" is 190 or any other number.

5. Denies that Stockholders Publishing Company, Inc., has refused to bargain with any appropriate unit or group representing its employees, and denies that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. represent a majority or any employees of Stockholders Publishing Company, Inc.

6. Denies that any question concerning the representation of "all main spot newsboys, full time newsboys, and check men who are engaged to sell The News within the city limits of Los Angeles, California, excluding bootjackers, temporary, casual, and part time newsboys" is a question affecting commerce within the meaning of the National Labor Relations Act.

Wherefore Stockholders Publishing Company, Inc. prays that the petition aforesaid be dismissed.

BINFORD & BINFORD,
By HOWARD M. BINFORD,
Attorneys for Stockholders
Publishing Company, Inc.

(Duly verified.)

BOARD'S EXHIBIT No. 2

United States of America
Before the National Labor Relations Board
21st Region

Case No. XXI R 928

Consolidated with Case No. XXI R 927
and
Case No. XXI R 1062

In the Matter of HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, C. I. O.
Petitioner.

AGREED STATEMENT OF FACTS

For the purpose of this proceeding, the undersigned, as counsel for the National Labor Relations Board, Twenty-first Region, and counsel for Los Angeles Evening Herald and Express, a separate business enterprise which is wholly owned and operated by Hearst Publications, Incorporated, respectively, do hereby stipulate and agree that the statements and information hereinafter set forth shall be received in evidence in the above entitled proceeding as an agreed statement of facts.

1. The Los Angeles Evening Herald and Express is an evening newspaper published daily except Sunday, at its plant situated at Los Angeles, California, and in which plant no other business is con-

ducted. It is a separate business enterprise wholly owned by Hearst Publications, Incorporated, a corporation organized and existing under and by virtue of the laws of the State of California, and incorporated on the twenty-second day of April, 1924. Hearst Publications, Incorporated, has its principal office and place of business at San Francisco, California. Hearst Publications, Incorporated, also wholly owns and publishes respectively as separate and independent enterprises, various daily and Sunday newspapers known as follows and published at the following places and respectively at separate plants and establishments and which enterprises have no connection with either the manufacture, publication, sale or distribution of said Los Angeles Evening Herald and Express, to-wit:

"Los Angeles Examiner", Los Angeles, California.

"San Francisco Examiner", San Francisco, California.

"San Francisco Call-Bulletin", San Francisco, California.

"Oakland Post-Enquirer", Oakland, California.

"Seattle Post-Intelligencer", Seattle, Washington.

Hearst Publications, Incorporated, has as subsidiaries the following corporations organized and incorporated in the states and on the dates indicated, and such corporations publish respectively the newspaper publications indicated, to-wit:

A. American Weekly, Inc., incorporated in New

York on December 13, 1921, which corporation publishes "The American Weekly", a Sunday magazine and comic section which is a supplement and part of various Sunday newspapers published in various cities and states throughout the United States. This enterprise has no connection with either the manufacture, publication, sale or distribution of said "Los Angeles Evening Herald and Express" and is wholly independent thereof.

B. Evening American Publishing Company, incorporated in Illinois on December 12, 1900, which corporation publishes "Chicago Evening American", a daily evening newspaper published in the city of Chicago, Illinois. This enterprise has no connection with either the manufacture, publication, sale or distribution of said "Los Angeles Evening Herald and Express" and is wholly independent thereof.

C. Pitt Publishing Company, incorporated in Pennsylvania on July 21, 1927, which corporation publishes the "Pittsburgh Sun-Telegraph", a daily evening and Sunday morning newspaper published in the city of Pittsburgh, Pennsylvania, and also operates at Pittsburgh, Pennsylvania, through its subsidiary WCAE, Incorporated, radio Station WCAE. These enterprises have no connection with either the Manufacture, publication, sale or distribution of said "Los Angeles Evening Herald and Express" and are wholly independent thereof.

C. The Times Publishing Company, incorporated in Michigan on October 14, 1921, which corpo-

ration publishes "Detroit Times", a daily evening and Sunday morning newspaper published in the city of Detroit, Michigan. This enterprise has no connection with either the manufacture, publication, sale or distribution of said "Los Angeles Evening Herald and Express" and is wholly independent thereof.

All of the capital stock of Hearst Publications, Incorporated, is owned by Hearst Consolidated Publications, Inc., a corporation organized in the State of Delaware on May 9, 1930, and all of the common stock of Hearst Consolidated Publications, Inc. is owned by The Hearst Corporation, a corporation organized under the laws of the State of Delaware on August 25, 1931, and all of the stock of The Hearst Corporation is owned by American Newspapers, Inc., a corporation organized under the laws of the State of Delaware on July 13, 1920, and all of the common capital stock of American Newspapers, Inc. is equitably owned by Mr. William Randolph Hearst. The legal title to said common capital stock is in Clarence J. Shearn as Voting Trustee. Hearst Consolidated Publications, Inc., The Hearst Corporation, and American Newspapers, Inc. have various subsidiaries engaged in the publishing and other businesses in various states of the United States. That no one of said corporations or subsidiaries in this paragraph mentioned has any connection or relation with either the manufacture, publication, sale or distribution of said "Los Angeles Evening Herald and Express" and

are each wholly independent thereof other than by related stock ownership as herein indicated.

2. The Los Angeles Evening Herald and Express uses the wire reports of International News Service, Associated Press, United Press, and Dow-Jones Financial Service, which in many instances, embrace news sent from without the State of California. All of these wire services have Los Angeles coverage of their own. To some wire services, the Los Angeles Evening Herald and Express gives the local news collected by it, and to other wire services it does not—depending upon the contract with the respective wire service, but to at least one wire service which is engaged in interstate transmission of news, it does give the news collected by its own organization. The average daily wordage received from the above wire services is as follows:

International News Service	50,000
Associated Press	220,000
United Press	32,000
Dow-Jones Financial Service	30,000

The same applies to photographs which are taken by their photographers, and are made available to some of the photographic services to which they subscribe, which photographic services also have their own Los Angeles coverage.

3. The said newspaper, to-wit: the Los Angeles Evening Herald and Express, is distributed throughout the State of California, but principally in the metropolitan area of Los Angeles, and has a daily average net paid circulation of 243,022, of which

only 903 copies are sold or distributed outside the State of California, the balance being sold and distributed wholly within the State of California. In other words, only 37/100 of 1% of its circulation of said newspaper is sold and distributed outside the State of California, while 99 63/100% of its circulation of said newspaper is sold and distributed wholly within the State of California.

4. Principal raw materials used in the printing of the Los Angeles Evening Herald and Express are newsprint, mats, and ink. During the year 1939, all of the newsprint was received from the States of Washington, Oregon, and the Dominion of Canada, and consisted of 18,915 tons. During said period all mats were received from the State of New York and consisted of 60,700 in number. The ink used, is manufactured in the State of California, and for said period consisted of 664,408 lbs.

5. Said Los Angeles Evening Herald and Express during the year 1939, received and published approximately 40 feature services, many of which were prepared and originated in states other than the State of California. Some of the features purchased are as follows:

Wishing Well
The Neighbors
Snickeroos
Hatlo Cartoons
Edwin C. Hill Column
Dale Carnegie
Helen Rowland

Good Manners
Beatrice Fairfax
Hap Hopper
Elsie Robinson
Room & Board Cartoon
Little Orphan Annie Cartoon
Moon Mullins Cartoon
Crossword Puzzles
Mickey Mouse Cartoon
Marriage Meddlers
Your Horoscope
Lewis Haney
Toots & Casper Cartoon

6. During the year 1939, an average of 39% of the space in said Los Angeles Evening Herald and Express was devoted to advertising. That during the year 1939, 84% of the advertising contained in said Los Angeles Evening Herald and Express wholly originated from within the State of California, and 16% of said advertising, during said period, originated from without the State of California. That as of May 4, 1940, said business enterprise, to-wit, the Los Angeles Evening Herald and Express, had on its payroll as employees 1106 persons.

7. Said newspaper, as of May 4, 1940, had 479 employees in its Circulation and Transportation Departments in the following classifications:

Payroll carrier boys
Collectors

Solicitors
Branch Managers
District Managers
Wholesalers
Downtown street men
Checkers and verifiers
Clerks
Distributors
Payroll corner boys
Promotion man
Stenographers
Cashier
Bookkeepers and clerks
Drivers
Mechanics
Platform men and helpers

FRANK A. MOURITSEN,
Counsel for the Board.
FLINT & MacKAY,
By EDWARD L. COMPTON,
Attorneys for Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated.

BOARD'S EXHIBIT No. 2-A

[Title of Board and Cause.]

AMENDMENT TO AGREED STATEMENT OF FACTS

It is hereby stipulated and agreed, by and between the undersigned as Counsel for the National Labor Relations Board, Twenty-first Region, and Counsel for the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated, that the Agreed Statement of Facts, heretofore and on June 6, 1940, signed by Counsel and filed in this action, shall be and the same is hereby amended in the following particulars:

(1) Paragraph B, appearing on page 2 of said Agreed Statement of Facts, is hereby amended to read as follows:

"B. Illinois Publishing and Printing Company, incorporated in Illinois on December 9, 1904, which corporation publishes "Chicago Herald-American", a daily evening and Sunday morning newspaper published in the City of Chicago, Illinois. This enterprise has no connection with either the manufacture, publication or distribution of said "Los Angeles Evening Herald and Express", and is wholly independent thereof."

(2) Paragraph C, appearing on page 3 of said Agreed Statement of Facts, referring to The Times Publishing Company, is amended by striking paragraph designation "C" therefrom and inserting in lieu thereof paragraph designation "D".

Signed at Los Angeles, California, this 11th day of June, 1940.

FRANK A. MOURITSEN
Counsel for the National Labor Relations Board
FLINT & MacKAY
By EDWARD L. COMPTON,
Attorneys for Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated.

BOARD'S EXHIBIT No. 8

[Title of Board and Cause.]

STIPULATION

For the purpose of this proceeding, the undersigned, as counsel for the National Labor Relations Board, Twenty-first Region, and counsel for Los Angeles Evening Herald and Express, a separate business enterprise which is wholly owned and operated by Hearst Publications, Incorporated, respectively, do hereby stipulate and agree that the following terms in the amended petition of Los Angeles Newsboys Local Industrial Union No. 75, CIO, shall be deemed to have the following meanings:

1. The term "full-time newsboy" means an individual who sells to the general public all editions

or all except the first edition of the Los Angeles Evening Herald and Express five or more days per week, and does not include check men, bootjackers, temporary, casual and part-time newsboys, as herein defined.

2. The term "bootjacker" is an individual who purchases newspapers for sale other than at an established corner or other established place of sale.

3. The term "part-time newsboy" means an individual who sells to the general public less than six editions of the Los Angeles Evening Herald and Express per day, and does not include check men, full-time newsboys, bootjackers, temporary and casual newsboys as herein defined.

4. The term "check men" shall be deemed to be synonymous with the term "wholesalers", and shall be deemed to be covered by the evidence in this proceeding to date.

5. The terms "temporary" newsboy and "casual" newsboy shall be deemed to have their ordinary and common significance.

It is further stipulated that this stipulation is intended to be merely for the purpose of defining terms, and is not intended to be a recognition by the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated that the classes of individuals defined herein, or any of them, constitute a proper bargaining unit, or any unit.

Dated at Los Angeles, California, this 14th day of June, 1940.

FRANK A. MOURITSEN
Counsel for the Board
FLINT & MacKAY
By EDWARD L. COMPTON
Attorneys for Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated.
NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, LOS ANGELES, CALIFORNIA, C. I. O.
By ROY ELEY
By PATRICK COMORRE
Representatives

BOARD'S EXHIBIT No. 10

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-927

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

AGREED STATEMENT OF FACTS

For the purpose of this proceeding the undersigned as counsel for the National Labor Relations

Board, Twenty-First Region, and counsel for Stockholders Publishing Company, Inc., a corporation, publishers of "The News", do hereby stipulate and agree that the statements and information hereinafter set forth shall be received in evidence in the above entitled proceeding as an agreed statement of facts:

1. The News is a twenty-four hour newspaper published daily except Sunday, at its plant situated at Los Angeles, California, and in which plant no other business is conducted.

2. Prior to April 1, 1940, "The News" was published under the name of (in the morning) as "Daily News", and (in the afternoon) as "Evening News".

3. That Stockholders Publishing Company, Inc. referred to above is a corporation organized under date of March 18, 1929, under the laws of the State of Nevada and has a principal place of business in the City of Los Angeles, County of Los Angeles and State of California.

4. The News uses the wire reports of United Press, which service furnishes news sent from without the State of California. The average daily wordage received from such wire service is 27,000 words.

5. The principal raw materials used in the printing of "The News" are newsprint, ink, mats and photographic supplies.

6. During the year of 1939 all of the newsprint

was received from the states of Washington and Oregon in the United States of America and the Dominion of Canada, and the cost of the same was approximately $470,000.00. During said period of time all mats used were received from outside the State of California and the amount paid for the same was approximately $4800.00. That during such period of time the ink used cost approximately $16,000.00, and was all purchased at Los Angeles, California. That the cost of photographic supplies during said period of time was approximately $3,600.00, the most of which were purchased within the State of California.

7. The current average daily circulation of "The News" (formerly Daily News and Evening News as aforesaid) both within and without the State of California, during the month of March, 1940. was as follows:

Within the State of California—195,191.
Outside the State of California—534.

8. The News during the year of 1939 received and published the following feature services:

NEA Service, Inc.,
1200 W. 3rd St., Cleveland, Ohio.
Household Arts, Inc.,
259 W. 14th St., New York, New York.
McClure Syndicate,
75 West Street, New York, New York.
Chicago Tribune-New York News Syndicate, Inc.,

220 E. 42nd St., New York, New York.
K. C. Beaton,
14134 Valeria St., Van Nuys, California.
McNaught Syndicate, Inc.,
45 East Putnam Ave., Greenwich, Connecticut.
Bell Syndicate, Inc.,
247 W. 43rd St., New York, New York.
Illustrated Fashion Features,
160 Fifth Ave., New York, New York.
Publishers Syndicate,
30 North La Salle, Chicago, Illinois.
United Feature Syndicate,
220 E. 42nd Street, New York, New York.
United Press Associations,
220 E. 42nd St., New York, New York.
Acme Newspictures, Inc.,
220 E. 42nd St., New York, New York.
City News Service of Los Angeles,
229 North Broadway, Los Angeles, California.
Editorial Research Reports,
1013 Thirteenth St., N. W., Washington, D. C.
King Feature Syndicate, Inc.,
235 East 45th Street, New York, New York.

9. Approximately 9,090,000 lines of space were devoted to advertising local, national and classified during the year of 1939, of which approximately 1,500,000 lines was devoted to national advertising

and approximately 5,860,000 lines to local advertising.

June 19, '40.

FRANK A. MOURITSEN
Counsel for the Board
BINFORD & BINFORD
By L. B. BINFORD
Attorneys for Stockholders
Publishing Company, Inc.

BOARD'S EXHIBIT No. 14

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-1062
Consolidated with XXI-R-927, XXI-R-928 and XXI-R-1084.

In the Matter of THE TIMES-MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

AGREED STATEMENT OF FACTS

For the purpose of this proceeding and none other, It Is Hereby Agreed that the facts hereinafter recited may be received in evidence in the above entitled proceeding as an Agreed Statement of Facts.

1. The Los Angeles Times is a newspaper of

general circulation published daily and Sunday by The Times-Mirror Company, a California corporation, with its principal place of business in Los Angeles, California. The plant at which said newspaper is published is located at First and Spring Streets, Los Angeles, California, and is devoted exclusively to publishing said newspaper.

2. The Los Angeles Times uses the wire reports of the Associated Press, the United Press, and Dow-Jones Financial News Service; it also receives wire service from Chicago Tribune and New York News. It obtains photographs from Wide World Photos and Associated Press. Information gathered and assembled by the Los Angeles Times, for publication, is available for use by the Associated Press. Photographs taken by photographers of the Los Angeles Times are available for use by the Associated Press and Wide World Photos. The Associated Press has its own news-gathering and photography facilties covering the City of Los Angeles and vicinity, and is not dependent upon the Los Angeles Times for local news or photographs. The Wide World Photos likewise has its own facilities, and is not dependent upon Los Angeles Times for acquiring photographs in the City of Los Angeles and vicinity.

3. Los Angeles Times is distributed principally throughout the City of Los Angeles and State of California. Its average daily net paid circulation for the year 1939 was 220,266 copies. Of this number, approximately 3,935 copies were sold or distributed daily outside the State of California. For the year 1939 the average daily out-of-state sales of

Los Angeles Times was approximately 1.7% of its average daily net paid circulation.

4. Los Angeles Times average Sunday net paid circulation for the year 1939 was 367,814 copies. Of this number, approximately 9,197 copies were sold or distributed each Sunday outside the State of California. For the year 1939 the average Sunday out-of-state sales of Los Angeles Times was approximately 2.5% of its average Sunday net paid circulation.

5. The principal raw materials used in publishing Los Angeles Times are newsprint, mats and ink. During the year 1939 newsprint of the value of $2,086,870.12 was purchased. All of said newsprint was purchased without the State of California. During said year mats in the amount of $6,909.00 were purchased from without the State of California. During said year ink in the amount of $99,476.85 was purchased, all from within the State of California.

6. During the year 1939 the Los Angeles Times received and published numerous features, many of them furnished by national syndicates, among the more prominent being:

Westbrook Pegler
Walter Lippman
American Institute of Public Opinion (Gallup Poll)
Frank Kent
George T. Hughes
Hedda Hopper

Red Ryder
Tarzan
Napoleon and Uncle Elby
Grin and Bear It.

7. During the year 1939 the average percentage of space in Los Angeles Times devoted to advertising was 39.9 per cent., approximately 8 per cent. of which constituted promotional or advertising matter pertaining to the Los Angeles Times. During 1939 national advertising constituted 14.1 per cent. of the total advertising appearing in the Los Angeles Times.

The execution of this stipulation by counsel for The Times-Mirror Company shall in no way constitute an admission by said company that National Labor Relations Board has jurisdiction over said company in so far as this proceeding is concerned; it is specifically agreed by all parties hereto that the Motion to Dismiss and Answer of The Times-Mirror Company, on file herein, are in no manner prejudiced by the execution of this stipulation.

Dated at Los Angeles, California, this 20th day of June, 1940.

WALTER SPRECKELS
Walter Spreckels,
Regional Director Twenty-First Region, National Labor Relations Board.

FRANK A. MOURITSEN
Frank A. Mouritsen,
Attorney, National Labor Relations Board.

LOS ANGELES NEWSBOYS' LOCAL INDUSTRIAL UNION No. 75, C. I. O.
By PATRICK COMORRE
By ROY ELEY

COSGROVE & O'NEIL,
T. B. COSGROVE,
F. B. YOAKUM, JR.,
By T. B. COSGROVE
Attorneys for The Times-Mirror Company

BOARD'S EXHIBIT No. 18

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-1084

In the Matter of HEARST PUBLICATIONS, INCORPORATED, (Los Angeles Examiner Department) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

AGREED STATEMENT OF FACTS

For the purpose of this proceeding, the undersigned as counsel for the National Labor Relations Board, Twenty-first Region, and counsel for Los Angeles Examiner, a separate business enterprise which is wholly owned and operated by Hearst

Publications, Incorporated, respectively, do hereby stipulate and agree that the statements and information hereinafter set forth shall be received in evidence in the above-entitled proceeding as an agreed statement of facts.

1. The Los Angeles Examiner is a morning newspaper published daily including Sunday, at its plant situated at Los Angeles, California, which plant is devoted exclusively to such publishing purposes. It is a separate business enterprise wholly owned by Hearst Publications, Incorporated, a corporation organized and existing under and by virtue of the laws of the State of California, and incorporated on the 22nd day of April, 1924. Hearst Publications, Incorporated, has its principal office and place of business at San Francisco, California. Hearst Publications, Incorporated, also wholly owns and publishes respectively as separate and independent enterprises, various daily and Sunday newspapers known as follows and published at the following places, and respectively at separate plants and establishments, and which enterprises have no connection with either the manufacture, publication, sale or distribution of said Los Angeles Examiner, to wit:

"Los Angeles Evening Herald and Express," Los Angeles, California;

"San Francisco Examiner," San Francisco, California;

"San Francisco Call-Bulletin," San Francisco, California;

"Oakland Post-Enquirer," Oakland, California;

"Seattle Post-Intelligencer," Seattle, Washington.

Hearst Publications, Incorporated, has as subsidiaries the following corporations organized and incorporated in the states and on the dates indicated, and such corporations publish respectively the newspaper publications indicated, to wit:

A. American Weekly, Inc., incorporated in New York on December 13, 1921, which corporation publishes "The American Weekly," a Sunday magazine (as well as a comic section) which is a supplement and part of various Sunday newspapers, including the Los Angeles Examiner, and including newspapers which are not Hearst newspapers;

B. Illinois Publishing and Printing Company, incorporated in Illinois on December 9, 1904, which corporation publishes "Chicago Herald-American," a daily evening and Sunday morning newspaper published in the City of Chicago, Illinois. This enterprise has no connection with either the manufacture, publication, sale or distribution of said "Los Angeles Examiner" and is wholly independent thereof;

C. Pitt Publishing Company, incorporated in Pennsylvania on July 21, 1927, which corporation publishes the "Pittsburgh Sun-Telegraph," a daily evening and Sunday morning newspaper published in the City of Pittsburgh, Pennsylvania, and also operates at Pittsburgh, Pennsylvania, through its

subsidiary WCAE, Incorporated, radio station WCAE. These enterprises have no connection with either the manufacture, publication, sale or distribution of said "Los Angeles Examiner" and are wholly independent thereof;

D. The Times Publishing Company, incorporated in Michigan on October 14, 1921, which corporation publishes "Detroit Times," a daily evening and Sunday morning newspaper published in the City of Detroit, Michigan. This enterprise has no connection with either the manufacture, publication, sale or distribution of said "Los Angeles Examiner," and is wholly independent thereof.

All of the capital stock of Hearst Publications, Incorporated, is owned by Hearst Consolidated Publications, Inc., a corporation organized in the State of Delaware on May 9, 1930, and all of the common stock of Hearst Consolidated Publications, Inc., is owned by The Hearst Corporation, a corporation organized under the laws of the State of Delaware on August 25, 1931, and all of the stock of The Hearst Corporation is owned by American Newspapers, Inc., a corporation organized under the laws of the State of Delaware on July 13, 1920, and all of the common capital stock of American Newspapers, Inc., is held by Clarence J. Shearn of New York City, New York, the Trustee under Voting Trust Agreement dated as of June 27, 1937, William Randolph Hearst, beneficial owner. Hearst Consolidated Publications, Inc., The Hearst Corporation, and American Newspapers, Inc., have various

subsidiaries engaged in the publishing and other businesses in various states of the United States. That no one of said corporations or subsidiaries in this paragraph mentioned (except Hearst Publications, Incorporated) has any connection or relation with either the manufacture, publication, sale or distribution of said "Los Angeles Examiner" and are each wholly independent thereof other than by related stock ownership as herein indicated.

2. Los Angeles Examiner uses the wire reports of International News Service, Associated Press and Dow-Jones Financial Service, which, in many instances, embrace news sent from without the State of California. Approximately 39,000 words of general news are received daily by the Los Angeles Examiner over the Associated Press day wire, of which the Los Angeles Examiner uses less than 5%. Approximately 75,000 words of general news are received daily by the Los Angeles Examiner over the Associated Press night wire, of which the Los Angeles Examiner uses approximately 30%. Approximately 34,000 words of general news are received daily by the Los Angeles Examiner over the International News Service day wire, of which the Los Angeles Examiner uses less than 5%. Approximately 34,000 words of general news are received daily by the Los Angeles Examiner over the International News Service night wire, of which the Los Angeles Examiner uses approximately 60%. A total of approximately 16,000 words of sports news is received daily by the Los Angeles

Examiner over the Associated Press day and night wires, of which approximately 50% is used. (It is estimated that during the baseball season approximately 75% of said news is used.) A total of approximately 10,800 words of sports news is received daily by the Los Angeles Examiner over the International News Service day and night wires, of which approximately 70% to 80% is used. A total of approximately 30,000 words of financial news is received daily by the Los Angeles Examiner over the Associated Press and International News Service day and night wires, of which from 75% to 80% is used. A total of from 27,000 to 30,000 words is received daily by the Los Angeles Examiner from the Dow-Jones Financial Service, of which approximately 10% are used. All of these wire services have Los Angeles coverage of their own. To some wire services the Los Angeles Examiner gives the local news collected by it, and to other wire services it does not—it depends upon the contract with the wire service, but to at least one wire service that is engaged in interstate transmission of news the Los Angeles Examiner gives the news collected by its own organization. Photographs which are taken by Los Angeles Examiner photographers are made available to one of the photographic services to which it subscribes, which photographic service also has its own Los Angeles coverage.

3. Los Angeles Examiner is distributed throughout the State of California, but principally in the metropolitan area of Los Angeles, and, according to its last Audit Bureau of Circulation figures, has

a daily (exclusive of Sunday) average circulation of 213,460 copies, only 3,743 copies of which are sold or distributed outside the State of California, the balance being sold and distributed wholly within the State of California. In other words, only 2% of its daily (exclusive of Sunday) circulation is sold and distributed outside the State of California, while 98% of said circulation is sold and distributed wholly within the State of California. It has a Sunday average circulation of 566,175 copies, only 46,901 copies of which are sold or distributed outside the State of California. In other words, only 8% of its Sunday average circulation is sold and distributed outside the State of California, while 92% of said circulation is sold and distributed wholly within the State of California. It has a combined daily and Sunday average circulation of 263,848 copies, only 9,909 copies of which are sold or distributed outside the State of California, the balance being sold and distributed wholly within the State of California. In other words, only 4% of its daily and Sunday circulation is sold and distributed outside the State of California while 96% of said circulation is sold and distributed wholly within the State of California.

4. Principal raw materials used in the printing of the Los Angeles Examiner are newsprint, mats, and ink. During the year 1939, all of the newsprint was received from the States of Washington, Oregon, and the Dominion of Canada, and consisted of 31,470 tons. During said period all mats were received from the State of New York and con-

sisted of 51,100 in number. The ink used is manufactured in the State of California, and for such period consisted of 1,065,581 pounds.

5. Said Los Angeles Examiner during the year 1939 received and published approximately 58 feature services, the material for many of which was prepared and originated in states other than the State of California.

6. During the year 1939 an average of 32 per cent of the space in the daily (exclusive of Sunday) issues of said Los Angeles Examiner was devoted to advertising, and an average of 48 per cent of the space in the Sunday issues of said Los Angeles Examiner was devoted to advertising. During the year 1939, 89.67 per cent of the advertising contained in the said Los Angeles Examiner wholly originated from within the State of California, and 10.33 per cent of said advertising, during said period, originated from without the State of California.

Dated at Los Angeles, California, this 24 day of June, 1940.

FRANK A. MOURITSEN,

.....

Counsel for the Board.

LAWLER, FELIX & HALL,
A. LAURENCE MITCHELL,
By JOHN M. HALL,

Counsel for Hearst Publications, Incorporated (Los Angeles Examiner Department)

United States of America
Before the National Labor Relations Board

Case No. R-1923

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. R-1924

In the Matter of HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. R-1925

In the Matter of TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. R-1926

In the Matter of HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Mr. Frank A. Mouritsen, for the Board.

Mr. L. B. Binford and Mr. Howard M. Binford, of Los Angeles, Calif., for the News.

Flint and McKay, by Mr. Edward L. Compton and Mr. Donald W. Hamblin, of Los Angeles, Calif., for the Herald.

Cosgrove & O'Neil, by Mr. T. B. Cosgrove and Mr. F. B. Yoakum, Jr., of Los Angeles, Calif., for the Times.

Lawler, Felix & Hall and A. L. Mitchell, by Mr. John M. Hall and Mr. Marcus Matson, of Los Angeles, Calif., for the Examiner.

Mr. Pat Commorre, Mr. Roy Eley, and Gallagher, Wirin & Johnson, of Los Angeles, Calif., for the Union.

Mr. Eugene R. Thorrens, of counsel to the Board.

DECISION AND DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

On various dates, hereinafter mentioned, Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein called the Union, filed with the Regional Director for the Twenty-first Region (Los Angeles, California), petitions alleging that questions affecting commerce had arisen concerning representation of employees of Stockholders Publishing Company, Inc., Los Angeles, California, herein called the News, Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) Los Angeles, California, herein called the Herald, Hearst Publications, Incorporated (Los Angeles Examiner Department) Los Angeles, California, herein called the Examiner, and The Times-

Mirror Company,[1] Los Angeles, California, herein called the Times,[2] and requesting investigations and certifications of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.[3] By orders entered July 31, 1939, March 27, 1940, and June 5, 1940, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the

---

[1]Designated in the notice of hearing herein as "Times Mirror Co."

[2]All four are herein together called the Companies.

[3]The Union filed its petitions relating to the cases involving the News and the Herald, being Cases Nos. R-1923 and R-1924, respectively, on April 21, 1939. On June 16, 1939, and June 8, 1940, it filed an amended and a second amended petition, respectively, in Case No. R-1923. At the hearing on June 18, 1940, counsel for the Board and counsel for the News entered into a stipulation with respect to the meaning of terms describing the appropriate unit contained in the petition as amended in Case No. R-1923 and the Union further amended its petition in that case to conform to the stipulation. On February 7, 1940, and on June 10, 1940, the Union filed an amended and a second amended petition, respectively, in Case No. R-1924, and at the hearing, on June 14, 1940, counsel for the Board and counsel for the Herald entered into a written stipulation with respect to the meaning of terms describing the appropriate unit contained in the petition as amended in Case No. R-1924. The Union filed its petition with respect to the case involving the Times, being Case No. R-1925, on March 21, 1940. On June 7, 1940, it filed an amended petition in Case No. R-1925. The Union filed its petition with respect to the case involving the Examiner, being Case No.

Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, as amended, ordered an investigation in each case and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. By orders entered March 27, 1940, and June 5, 1940, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 10 (c) (2), of said Rules and Regulations—Series 2, as amended, directed that the 4 cases be consolidated.

Each of the Companies filed motions to dismiss the petitions accompanied by answers.[4] In substance, these pleadings asserted that the Companies' activities did not affect commerce and that the newsboys whom the Union sought to represent were not employees within the meaning of the Act. In ad-

---

R-1926, on May 18, 1940. During the course of the hearing on June 22, 1940, the Union moved to amend its petitions in Cases Nos. R-1925 and R-1926 with respect to the allegations concerning the appropriate unit and the Trial Examiner reserved his rulings upon the motions for the consideration of the Board. The motions are hereby granted.

[4]The Trial Examiner granted the Companies' applications to have their respective motions to dismiss and answers stand as to the petitions as amended during the course of the hearing. The Trial Examiner was not requested by any of the parties to rule on the motions to dismiss and the Trial Examiner made no rulings thereon. For the reasons hereinafter indicated, the motions to dismiss are hereby denied.

dition, each of the Companies alleged that the unit sought by the Union in each case, respectively, was inappropriate.

On June 5, 1940, the Regional Director issued a notice of hearing, copies of which were duly served upon the Companies and the Union. Pursuant to the notice, a hearing was held at Los Angeles, California, from June 10, 1940, to June 27, 1940, inclusive, before Thomas H. Kennedy, the Trial Examiner duly designated by the Board. The Board and the Companies were represented by counsel. The Union appeared by representatives. All participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

The Union and the Companies have filed briefs which have been considered by the Board. None of the parties requested the privilege of oral argument and none was held.

After the hearing, counsel for the Board, and counsel for the Companies entered into a stipulation, dated September 26 and October 1, 1940, for correction of errors in the transcript of the testimony and, on October 4, 1940, the Board issued its order making the stipulation a part of the record.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

1. The business of the Companies[5]

A. Stockholders Publishing Company, Inc.

Stockholders Publishing Company, Inc., a Nevada corporation, having its principal place of business in Los Angeles, California, is engaged in the publication, distribution, and sale of a daily (except Sunday) newspaper, "The News."[6] The principal raw materials used in the printing of the News consists of newsprint, mats, ink, and photographic supplies. During the year 1939, all the newsprint, costing approximately $470,000, and all the mats, costing approximately $4800, were obtained outside the State of California. During the same period, all the ink, costing approximately $16,000, and most of the photographic supplies, costing approximately $3600, were purchased within the State of California. The daily average circulation of the News for March 1940 was 195,725 copies, 534 of which were circulated and distributed outside the State of California.

---

[5]The facts related in this section are set forth in written stipulations signed by each of the Companies and introduced in evidence.

[6]About April 1, 1940, the News combined "The Daily News," the morning edition, and "The Evening News," and thus established a 24-hour publication under a single name, "The News."

The News uses the wire reports of United Press which furnishes news sent from outside the State of California. It uses daily approximately 27,000 words obtained from this wire service. In 1939 the News published 13 feature services which it received from service houses located outside the State of California.

During 1939, 9,909,000 lines of space was devoted to local, national, and classified advertising. Of this advertising space, 1,500,000 lines were devoted to national advertising.

B. Hearst Publications, Incorporated

1. Los Angeles Evening Herald & Express

Hearst Publications, Incorporated, is a California corporation with its principal office and place of business in San Francisco, California. It is engaged in the publication of various daily and Sunday newspapers, including the Los Angeles Evening Herald & Express.[7]

---

[7]In addition to the Herald, Hearst Publications, Incorporated, operates five other newspapers (Los Angeles Examiner, San Francisco Examiner, San Francisco Call-Bulletin, Oakland Post-Enquirer, and Seattle Post-Intelligencer) and owns stock in the following subsidiaries: (1) American Weekly, Inc., a New York corporation which publishes "The American Weekly," a Sunday magazine and comic section which is a supplement and part of various Sunday newspapers published in cities throughout the United States; (2) Illinois Publishing and Printing Company, an Illinois corporation, which publishes the "Chicago Herald-American"; (3) Pitt Publishing Company, a Pennsylvania corporation, which publishes the "Pittsburgh Sun-Tele-

The Herald is an evening paper published daily except Sunday at its plant in Los Angeles[8] and distributed throughout the State of California, principally in the metropolitan area of Los Angeles. Its daily circulation averages 243,022 copies, of which approximately 37 hundreds of 1 per cent or 903 copies are sold and distributed outside the State of California.

---

graph" and operates through its subsidiary, WCAE, Incorporated, radio station WCAE; and (4) The Times Publishing Company, a Michigan corporation, which publishes "Detroit Times." Hearst Publications, Inc. is a wholly owned subsidiary of Hearst Consolidated Publications, Inc., a Delaware corporation, all of the common stock of which is owned by The Hearst Corporation, a Delaware corporation, a wholly owned subsidiary of American Newspapers, Inc., a Delaware corporation. Clarence J. Shearn, as voting trustee, holds the legal title to all the common stock of American Newspapers, Inc., for the benefit of William Randolph Hearst. Hearst Consolidated Publications, Inc., The Hearst Corporation, and American Newspapers, Inc. have various subsidiaries engaged in the publishing and other businesses in various parts of the United States. Cf. Matter of William Randolph Hearst, Hearst Publications, Inc., Hearst Consolidated Publications, Inc., Hearst Corporation, American Newspapers, Inc. and King Features Syndicate, Inc. and American Newspaper Guild, Seattle Chapter, 2 N.L.R.B. 530, enf'd as mod., National Labor Relations Board v. Hearst, 102 F. (2d) 658 (C.C.A. 9).

---

[8]This plant is exclusively devoted to the publication and distribution of the Herald and is operated independently of other papers published by Hearst Publications, Incorporated.

The principal raw materials used in the printing of the Herald include newsprint, mats, and ink. During the year 1939, all the newsprint, consisting of 18,915 tons, was obtained from the States of Washington and Oregon and the Dominion of Canada. During the same period, all the mats, numbering 60,700, were obtained from the State of New York. The ink used, amounting to 664,408 pounds, was manufactured in the State of California.

The Herald uses the wire reports of the International News Service,[9] the Associated Press,[10] the United Press,[11] and the Dow-Jones Financial Service. It uses daily approximately 332,000 words received from these services. The Herald supplies at least one wire service engaged in the interstate transmission of news with local news which the Herald has collected. In 1939 the Herald received and published approximately 40 feature services,

---

[9]For a description of the business of International News Service, see Matter of William Randolph Hearst, et al. and American Newspaper Guild, Seattle Chapter, 2 N.L.R.B. 530, enf'd as mod., National Labor Relations Board v. Hearst, 102 F. (2d) 658 (C.C.A. 9).

[10]For a description of the Nation-wide business of the Associated Press, see Matter of The Associated Press and American Newspaper Guild, 1 N.L.R.B. 788, enf'd, National Labor Relations Board v. Associated Press, 85 F. (2d) 56 (C.C.A. 2), 301 U.S. 103.

[11]For a description of the business of the United Press, see Matter of United Press Associations and American Newspaper Guild, 3 N.L.R.B. 344.

the material for many of which was prepared and originated in States other than the State of California.

During the year 1939, an average of 39 per cent of the space in the Herald was devoted to advertising. Of this advertising space, 84 per cent contained advertising originating in the State of California while the remainder, 16 per cent, contained advertising originating outside the State of California.

2. Los Angeles Examiner[12]

As we noted above, Hearst Publications, Incorporated, also publishes the Los Angeles Examiner. The Examiner is a morning newspaper published daily, including Sunday, at its plant in Los Angeles, California.[13] It has a daily[14] average circulation of approximately 213,460 copies and a Sunday circulation of approximately 566,175 copies. It is distributed throughout the State of California, principally in the metropolitan area of Los Angeles. Of the daily circulation, approximately 2 per cent or 3,743 copies are sold and distributed outside the State of California. Of the Sunday

[12]See Matter of Hearst Publications, Incorporated (Los Angeles Examiner Department) and Newspaper Circulators, Wholesale Distributors and Miscellaneous Employees Union No. 21666, American Federation of Labor, 25 N.L.R.B., No. 74.

[13]This plant is devoted exclusively to the publication of the Examiner and is operated independently of other Hearst papers.

[14]Exclusive of Sunday.

edition, approximately 8 per cent or 46,091 copies are sold and distributed outside the State of California.

The principal raw materials used in printing the Examiner include newsprint, mats, and ink. During the year 1939, all the newsprint, consisting of 31,470 tons, was obtained from the States of Washington and Oregon and the Dominion of Canada. During the same period, all the mats, numbering 51,100, were obtained from the State of New York. The ink used, amounting to 1,065,581 pounds, was manufactured in the State of California.

The Examiner uses International News Service, Associated Press, and Dow-Jones Financial Service wire reports. It uses daily approximately 88,750 words obtained from these services. The Examiner supplies at least one wire service engaged in the interstate transmission of news with local news which the Examiner has collected. In 1939 the Examiner received and published approximately 58 feature services, the material for many of which was prepared and originated in States other than that State of California.

During the year 1939 an average of 32 per cent of the space in the daily and 48 per cent of the Sunday issues of the Examiner were devoted to advertising. Of this advertising space, 89.67 per cent contained advertising originating in the State of California while the remainder, 10.33 per cent, contained advertising originating outside the State of California.

C. The Times-Mirror Company

The Times-Mirror Company, a California corporation, having its principal place of business in Los Angeles, California, is engaged in the publication, distribution, and sale of "The Los Angeles Times," a morning newspaper, published daily including Sunday, at its plant in Los Angeles. During the year 1939 the Times had an average daily circulation of 220,266 copies and a Sunday circulation of 367,814 copies. It is distributed throughout the State of California, principally in the metropolitan area of Los Angeles. Of the average daily circulation, approximately 1.7 per cent or 3,935 copies were sold during the year 1939 outside the State of California. Of the Sunday edition, approximately 2.5 per cent or 9,197 copies were sold during the same period outside the State of California.

The principal raw materials used in printing the Times include newsprint, mats, and ink. During the year 1939, all the newsprint, having a value of $2,086,870.12, was purchased outside the State of California. During the same period, all the mats, having a value of $6,909.00, were purchased outside the State of California. The ink used, having a value of $99,476.85, was purchased in the State of California.

The Times uses the wire reports of the Associated Press, the United Press, and Dow-Jones Financial News Service. In addition, it receives wire service from the Chicago Tribune and the New

York News, and obtains photographs from Wide World Photos and the Associated Press. The Times supplies news gathered and assembled by it to the Associated Press. In 1939, The Times received from national syndicates and published at least 10 feature services, among the more prominent being Walter Lippman, Westbrook Pegler, and American Institute of Public Opinion (Gallup Poll).

During the year 1939, an average of 39.9 per cent of the space in the Times was devoted to advertising. Of this advertising space, 14.1 per cent contained national advertising.

II. The organization involved

Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in the metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines, and periodicals, except those who have the power to hire and discharge.

III. Status of the newsboys involved in this proceeding.

The Union seeks in this proceeding to obtain from the Board certification as collective bargaining representative of persons who engage in the street sale of newspapers published by the Companies. As we have noted above, the Companies resist the Union's petitions contending, inter alia, that the relationship between each of the Companies and the newsboys

who sell their respective publications is that of vendor and vendee, that the newsboys are not employees within the meaning of the Act, and thus are not entitled to its protection. We pass to a consideration of that issue.

Circulation managers of the respective Companies control the general execution of their policies relating to newspaper distribution. The metropolitan area of Los Angeles, the territory in which the newspapers are generally distributed, is divided for administrative purposes into specific geographical districts, and district managers assigned by the circulation manager to assist in the circulation and distribution of the newspaper in these districts control the execution of the Companies' policy with respect to newspaper circulation and distribution within such districts.[15]

Each district manager works in an assigned geographical area, varying in mileage, within which he is authorized to distribute the newspaper published by his company. He receives for his services a fixed

---

[15]In the Herald organization, placed between the circulation manager and the district managers are four branch managers who have charge of circulation and distribution in a number of districts and who immediately supervise the work of the district managers. In the Times organization, a supervisor of street sales, who stands in a position similar to the Herald branch manager, superintends all Times' district managers. In the Examiner organization, the P.M. street sales manager is the counterpart of the Times supervisor of street sales. The record does not disclose whether a comparable position exists in the News organization.

salary or a guaranteed minimum plus commissions. His name is carried on the company pay roll, and, admittedly, he is an employee of the publisher.[16] Each district manager obtains newspapers for purposes of distribution at the publisher's plant, travels throughout his district and delivers the newspapers or directs company-employed truck drivers to haul the newspapers, wrapped in bundles and addressed to specific newsboys, in trucks provided by the publisher. The newspapers are delivered to newsboys, who sell them to the public, or are delivered to so-called checkmen[17] stationed at important corners or spots who redistribute the newspapers to newsboys stationed at neighboring corners or spots of lesser importance.[18] For his services in redistributing newspapers the checkman receives a small salary from the publisher. He is carried on the publisher's payroll. At least to the extent of such services, he is admittedly an employee of the publisher. In addition to such wholesaling activities, the checkman sells newspapers to the public and, in

---

[16]See, also, Matter of Hearst Publications, Incorporated (Los Angeles Examiner Department) and Newspaper Circulators, Wholesaler Distributors and Miscellaneous Employees Union No. 21666, American Federation of Labor, 25 N.L.R.B., No. 74, where, in a complaint proceeding, the Board found that Examiner district managers were employees of that publication.

[17]Sometimes the checkmen are referred to as "main-spot" while the other newsboys are called "off-spot" boys or men.

[18]The Times does not employ such checkmen.

all other respects, he occupies a position similar to that of the ordinary newsboy.

The publisher makes a charge against the district manager for each newspaper that he takes from the plant. Likewise the district manager enters a charge, which is set by the publisher,[19] against the newsboy or the checkman, as the case may be, for each newspaper delivered to him, and the checkman charges the newsboy an amount equal to the sum charged the checkman by the district manager. At the end of the selling period, the newsboys settle with the district manage or the checkman, as the case may be, the checkmen settle with the district manager, and the district manager accounts to his superior for the newspapers. Except in a residential section under the supervision of A. W. Brewster, Herald branch manager, the newsboys are permitted by each of the Companies to return all unsold copies and receive credit for them.[20] The price of each of the news-

---

[19]Except in the case of the News, where the publisher permits the district manager to determine the amount charged by him.

[20]Newsboys selling the Herald in Brewster's territory do not receive credit for newspapers delivered to them as part of a so-called established or "standing" order. The established order is determined by "experience" with reference to the number of papers normally sold at a given corner or spot. Even in Brewster's territory, the newsboys receive full credit for all newspapers delivered to them by

papers to the public is set by the respective Companies and is printed on the masthead. The newsboys retain for themselves as earnings the difference between the amount they pay the publisher for the newspaper and the sum they receive for it from the public.[21]

Although Herald supervisors, including Circulation Manager William J. Harrison and branch manager A. W. Brewster testified that newsboys have the "right" to determine the number of newspapers to be included in their established order, it is undenied that the district managers unilaterally determine the number of "extra" papers, in excess of the established order, which the newsboys must attempt to sell. Moreover, in practice the newsboys cannot determine the size of their established order without the cooperation of the district manager. Thus, Arthur Steuart testified that daily regulation of the size of his established order was impossible since "the district man tells me that it takes too much trouble in his bookkeeping." In such situations, the newsboys' privilege is limited to a reallo-

---

the district manager in excess of the established order remaining unsold. In certain instances, Herald district managers have given the newsboys partial credit for unsold copies.

[21]Prior to the fall of 1935, the Times paid Edward Patch, a Times newsboy, a weekly bonus, which he received in the form of a Times check, in addition to the differential retained by newsboys. Since the fall of 1935 when the Times discontinued the bonus payments, there has been no substantial change in the Times mode of operation in the circulation of its newspaper with respect to Patch.

cation of his order with respect to the number of papers of a given edition without changing the total number of papers in the established order for the day. Several other instances, moreover, reveal that the newsboy often has no voice in the determination of the established order.[22] The experience of Sam Kahn, a checkman for the Herald and for the News, is illustrative. On cross-examination by counsel for the Herald, Kahn testified, in part, as follows:

> Q. Now, do your put in every day to your district man a standing order for papers?
>
> A. No, sir. . .
>
> . . . . . .
>
> Q. Well, will you explain then how you buy the papers that you obtain, that is, the Herald and Express?
>
> A. It isn't that I buy it. I have to take what they give me.
>
> Q. You mean that you don't indicate in any respect how many papers you want from day to day?
>
> A. No, sir. Well, sometimes if the papers are going good I will ask for an increase; but I get an increase at times regardless of whether they are going good or not, especially during this time, during the war crisis.

[22] Circulation Manager Harrison admitted in his testimony that the newsboys are permitted to increase their orders "within reasonable limitations" and that the Herald often unilaterally lowers the established order to prevent excessive returns.

Q. Well, prior to the war crisis, didn't you tell your district man from time to time how many papers you wanted?

A. No, sir.

Q. You mean you have nothing to do with the number of papers that are delivered to you?

A. No, sir.

* * * * * * *

Q. Do you supply papers to other boys on that corner?

A. Yes, sir.

Q. Do you supply any particular number on any given day to them?

A. Well, not exactly. I just know how many they sell and I give them that many.

Q. Do they tell you how many they want?

A. No, sir.

Q. You give them the number that from past experience you know they can sell, is that it?

A. Yes, sir.

Q. And you endeavor to sell the rest yourself?

A. . . . . I do . . . . .

Celestino Sanchez, Grover C. Nixon, and Harry L. Buhl, Examiner newsboys, gave similar testimony with reference to the distribution of the Examiner establishing that the district managers determine the number of papers delivered to those newsboys. Shortly prior to the hearing when the Times changed its press time from 5 to 6 o'clock Roy Eley's "order" was reallocated without his request

by the Times' district manager with the result that Eley received the same number of papers in one delivery that he formerly got in two.

The newsboy customarily obtains his corner or spot by making application at the plant of the publisher where he consults a district manager. The applicant usually inquires whether there is a corner or spot "open." If an opening exists, the district manager escorts the newsboy to the corner or spot and furnishes him with newspapers or directs him to a checkman who shows the newsboy his territory and furnishes him with newspapers. Thus, Harry Plotkin, Herald district manager, testified that he "hire" (d) all the newsboys in his district who "work(ed) under" the checkman and that on such occasions it was his practice to send the successful applicant to see "the (check) man in charge there . . . (who) will put (him) to work . . . and supply him with papers. . . ." Sidney Glen Murray, News district manager, stated in his testimony that applicants "come to me for a job and if they like it, why, to keep it and if they don't, I will have to look up somebody else. . . ." In reply to an inquiry at the hearing as to whether he ever placed newsboys on corners, Julius J. Cohen, superintendent of street sales for the Times, disclosed that "boys have come in and asked for corners and I have asked the district men if they have any corners open." In recent months preceding the hearing, William H. Seebolt, Examiner district manager, placed newsboys on spots in the downtown area where the Examiner "didn't have

. . . . anybody then to sell," and Gilbert Navarro and Nicholas Volanty, Examiner night district managers, admitted in their testimony that they placed newsboys on corners in their respective districts.

Not only do the district managers of the Companies allocate corners and spots, they also issue detailed directions as to specific places within the newsboy's allotted territory in which to engage in selling activities, particularly with reference to standing in street traffic and covering business establishments where large numbers of people congregate. District Manager Plotkin of the Herald instructed Sam Kahn, a checkman, to "always play that safety zone and get out into traffic." Although Kahn finds that he can sell more newspapers while stationed on his corner, he regularly patrols the safety zone in the street in compliance with Plotkin's order. Ivan Moore, News district manager, told James V. Apice, a News checkman, to instruct a newsboy to whom Apice distributed papers to sell in the safety zone "for such time as was necessary." Thomas McKinney, Times district manager, did not deny that he gave the following instructions to Roy Eley, a Times newsboy, when he first began selling papers. Eley related that

> (McKinney) counted out a certain number of papers. . . . he told me that there was one of those that was not to be charged to me, that I should leave it at the drug store in the market, and at the same time I should go up to the liquor store just above there, where there

was a certain sale, and over to the little restaurant where there was another certain sale, and then come back to the corner, to work through the market, and get out on the traffic line, in the traffic.

When Frank Curtis, Times' district manager, transferred newsboy Roberts from his original place to a spot across the street where a "drive-in-stand" was located, Roberts was instructed by Curtis ". . . to work traffic and cover this drive-in-stand . . . You have got to watch them cars in there every ten or fifteen minutes and make the stands and work your traffic as much as possible. . . . Now, it's all right to go in this stand and go in the bar there and flash your papers, but do not blast your headline or anything like that. . . . The management objects to that but . . . hold your paper up and give the customers a chance to see the paper. Don't cause any disturbance. . . . Go right back to your safety zone." When Ernie Latham first began selling the Examiner, William Jackson, Examiner district manager, took Latham to his corner, told him to "watch" the corner, to "work" the market located nearby, and to "work the white (traffic) lines" in the street. On another occasion, Jackson told Latham, who then operated as a checkman, to instruct an off-spot boy to whom he supplied papers "to work in the safety zone."

The Companies furnish boxes, racks, change aprons, and placards advertising special features contained in the newspapers, bearing the name of

the publisher. To facilitate the work of the newsboy and to increase circulation, according to the testimony of several newsboys, the district managers distribute such equipment and advertising matter to the newsboys with instructions to keep the newspapers in the boxes or the racks and to display the advertising matter on posts, fire plugs, or other vantage points.[23]

Generally the newsboy is required to be at his post from the time the newspapers customarily appear on the street to the time settlement is made.[24] Instances are found in the record where the district manager definitely fixed the newsboy's hours. Ed Bryant, a newsboy who sells the Herald, the News, and the Examiner, testified that he understood that the hours of the Herald and of the News were from 9 to 7 and that he received such information from Joe Woods, Herald district manager, and two or three unnamed Examiner district managers, who told him "what time the editions came out . . . (on) the streets." Questioned by the Trial Examiner, Bryant, a witness called by the Herald, admitted that he was not his own "boss" because he could not "open . . . and close" whenever he

[23]In some instances this is not denied. In others, district managers implicated by the newsboys' testimony, deny giving such instructions and say that the newsboys know what to do with the boxes, racks, and advertising material without instructions.

[24]When the publisher plans to issue an "extra," district managers notify the newsboys who are expected to attend their locations on such occasions either before or after the usual selling period.

wished and had "to work specified hours." Although Joe Woods appeared as a witness, he did not testify with respect to this aspect of the case. Isaiah J. Moore, News district manager, stated in his testimony that he worked from 10:20 in the morning until 6:15 at night; that he had "ten all-day boys that work all day" and 20 to 30 boys who work after school "for" him; that the 10 newsboys sell from the time that he arrives on the street with the first edition of the paper to the time that he "leaves at night" when he collects from the newsboys; and that "the schoolboys work from approximately 3:30 to 7 o'clock." When Lou Law, News district manager, assigned Frank B. Smith to a corner at Fifth and Los Angeles in December 1939 or January 1940, he was instructed by Law to "be there between 4:30 and 5 in the morning, . . . work until 10 and check in. . . ." John F. Fields, Times newsboy, testified that at the time he "first started" he was instructed by Bill Moore, Times district manager, to report at the Times concourse at 4:30 daily (except Saturday and Sunday), 2 o'clock on Saturday, and 3 o'clock on Sunday, and to "check in" when Moore appeared at approximately 1 a. m. Bill Moore was not a witness.

When Thomas McKinney, Times district manager, assigned Roy Eley, a Times newsboy, to an off-spot at Fletcher and San Fernando, he was instructed by McKinney, among other things, "to work until 11 o'clock." Eley appeared daily at the Times concourse to report to McKinney before

proceeding to his spot. Customarily McKinney and other Times district managers transport by automobile Times newsboys from the Times concourse, where they report to sell newspapers, to spots within their districts.[25] Harry L. Buhl, an Examiner newsboy, testified that he was instructed by Abe Pierce, Examiner district manager, to be at his (Buhl's) location at 6 p. m. although the papers do not ordinarily reach his corner until 6:45 or 7 o'clock, and to "check in" at the Belmont Grill where Pierce appeared at 1 a. m. Pierce was a witness but he did not deny Buhl's testimony.

The record is replete with instances in which district managers have removed, permanently or temporarily, newsboys from their corners or transferred them from one location to another, for various reasons. About Christmas 1937 Harry Gish, a newsboy, was removed from his spot by Joe Woods, Herald district manager, who received recurring complaints concerning Gish's personal uncleanliness from the manager of a business establishment located near Gish's spot who threatentd to appeal to the local health authorities. Gish was never restored to his spot. Woods admits this. Joe Roth, a 73-year-old newsvendor, testified that he was "fired" twice by

---

[25]Times district managers pay 12 newsboys a small sum each week for providing transportation for other newsboys and the Times makes an allowance to the district manager to cover this expense.

Woods.[26] Shortly prior to January 1939, Woods removed Roth because of his record for excessive returns of unsold newspapers. After Roth lodged a grievance with the Union, Woods restored Roth to his corner. Shortly after January 1939, Woods found Roth selling the Herald for 4 cents. Woods warned: "You can't sell those papers for 4 cents. The price is 5 cents. If I find out you do that again, I'll fire you." Thereafter, Roth observed the established retail price of a nickel. Woods testified both before and after Roth gave his testimony. At first Woods stated that he "never fired anyone." When Woods testified later, at the instance of the Herald, he was not interrogated with respect to Roth. We do not therefore credit Woods' general denial. In October or November 1938, James V. Apice, a newsboy, was removed from his corner by George E. Hutchinson, Herald district manager. When Apice appealed to the Herald downtown office, a Mr. Neal, who is not further identified in the record, informed Apice that he was "fired" because the Herald had received a complaint from an outraged father to the effect that Apice had made indecent remarks to a young girl. Friendly businessmen circulated a petition in Apice's behalf and presented it to the Herald. After an investigation of the matter, in which Apice was cleared, Neal told Apice to return to work, and he resumed selling at his corner after a 4-day en-

[26] As hereinafter appears, apparently Roth meant that Woods threatened discharge on one of the two occasions.

forced absence. This is not denied. Lou Law, News district manager, transferred Edward V. Smith, a newsboy, from one corner to another on December 4, 1939. Law designated the new corner and told Smith that there would be a man there to show Smith where to sell. When he reported to the new corner, a man there showed Smith his territory. Law did not testify, and the record does not disclose the reason for the transfer. Likewise, Roy Eley, a Times newsboy, was transferred from a location in Glendale, California, to another spot by Times' district manager, Thomas McKinney, to enable McKinney to assign to the Glendale spot another newsboy who operated an automobile and who could provide transportation for other Times newsboys traveling from the Times concourse to locations en route to Glendale. Shortly prior to Christmas 1938, Frank Curtis, Times district manager, removed permanently John A. Roberts, a Times newsboy, from his spot when Curtis decided that Roberts disposed of an insufficient number of newspapers to warrant his retention. According to Roberts, Curtis stated: "Roberts, I can't use you any more; I am going to have to put somebody on there that will hustle that spot. I have got so many papers to sell and I have got to put somebody on there that will work it better than you are." Curtis was not a witness. In September 1939, Nick Volanty[27] removed Charles Seklemian from his spot and later reinstated him.

---

[27]Volanty described himself in the record as a P. M. street manager for the Examiner.

According to the latter's testimony, Seklemian was told by Volanty that he had received a telephone call at the office of the Examiner from an operator of a beer garden in Seklemian's territory who stated that he would bar Seklemian from the beer garden since he wore a Bridges or C. I. O. button. Seklemian further testified that he was chided by Volanty for not concealing such buttons, that Volanty stated that Seklemian's sales had been declining, and that Volanty informed Seklemian that "the office was sending out another hustler" as a substitute at a cost of $4.50 for the night. As a result, the next night Seklemian did not sell papers. The following night, however, he persuaded Volanty to change his mind and obtained reinstatement. In his testimony Volanty denied generally that he ever paid a newsboy any amount to substitute for Seklemian; otherwise, he failed to testify about the button incident or Seklemian's removal. We find that Seklemian was removed from his corner and subsequently reinstated under circumstances substantially as related above by him.

The record also contains evidence with respect to the extent of the Companies' supervision over the conduct of the newsboys while they are engaged in selling newspapers on the street. While the Companies assert that their relation to a newsboy who "buys" his papers from the publisher and who "pays" cash for them is strictly that of seller and buyer, yet the diligence of the newsboys is closely observed by the circulation department. Thus Harry

Plotkin, Herald district manager, admitted in his testimony that it was part of his duties to "go around and see that . . . the newsboys . . . are working" and that the checkman's duties consisted, in part, in seeing that the newsboys, who receive newspapers from checkmen, "are out there working." Darrell Cole, who described himself as a circulation representative for the Examiner, testified that it was part of his duties to check the conduct of street sales by traveling through the districts and observing whether the newsboys were stationed at their corners selling the Examiner. He testified that if he found a newsboy absent from his post, he waited until the newsboy returned, noted the length of the period elapsing between the time of his own arrival at the corner and the time of the newsboy's return, and submitted a written report to his superior, Arthur Hampson, Examiner supervisor of night street sales.[28] The supervisor or the investigator transmits the complaints to the district manager who brings the matter to the attention of the offending newsboy with the view of remedying the situation in the future.[29] About 6 to 9 months before the hearing,

[28]In addition to Cole, the Examiner employs two others who, like Cole, perform similar services.

[29]At the hearing Hampson denied that he ever made use of Cole's reports to discipline a newsboy. He admitted, however, that he had no knowledge whether district managers disciplined newsboys as the result of Cole's reports and he was not interrogated with respect to the use he made of information gained from the reports of the Examiner's two other investigators. We do not credit Hampson's testimony.

Herald district manager, Louis K. France, showed Arthur Steuart, a Herald checkman, a yellow slip of paper, containing various reports, which purported to show, among other things, that neither newsboy or newspapers could be found on Steuart's corner one night at 8:58 p. m. Steuart was told by France that he obtained the slip from a "spotter" who drives through the district and checks the corners; and France instructed Steuart to keep his corner "covered" thereafter until 9 p. m. On one occasion when William Jackson, Examiner district manager, found Ernie Latham, an Examiner newsboy, sitting on a fire plug and holding one remaining copy of an early edition of the Examiner, Jackson inquired why Latham was not working, stated that "the office would be on (him) if they (caught Latham) sitting down," and told Latham ". . . . to get out there and sell those papers." On another occasion, Jackson arrived at Latham's location while he was eating his lunch in the corner drug store. When Latham's object in visiting the drug store was learned by Jackson, he told Latham to "get a sandwich and stay outside on the corner."

In April 1939, Harry Plotkin, Herald district manager, notified Sam Kahn, a checkman, of a 2-or 3-day lay-off. When Kahn asked for an explanation, Plotkin stated: Bill Abels[30] . . . . the checker, came by and told me to lay you off because you weren't on your corner . . . hustling." Harry

[30]Assistant to Jake Gratz, Herald branch manager and Plotkin's immediate superior.

Relis, who sold the News, found it necessary to absent himself from his corner during an unstated period once or twice a week for 2 to 3 hours at a time. During these intervals he had another newsboy cover his spot. Martinez, News district manager, called Relis' attention to his absences, saying: "You know that you have to stay on this corner all the time because we want to sell papers." Martinez was not a witness. Times district manager Curtis reprimanded newsboy Roberts because he stopped trying to sell papers during a rainfall, and as we noted above, Curtis discharged Roberts the next day for not hustling.

As a general practice, the newsboys sell more than one newspaper and handle magazines.[31] In certain instances, however, the Companies have objected to the newsboys' handling competing publications. Herald district manager France warned Arthur Steuart to quit selling the People's World, the Hollywood Tribune, the Sports Weekly, and Ham and Eggs because that practice "was not allowed by the Herald" and instructed Steuart to

[31]Joe Woods, Herald district manager, supplies most of these magazines, including the Saturday Evening Post and Liberty, to the newsboys. The newsboys return to Woods all unsold copies for credit, and retain for themselves the difference between the price they receive from the purchaser and the amount charged for each magazine by Woods. Although Woods handles the magazines as a side line business in which the Herald has no direct financial interest or control, he engages in such business with the permission of William J. Harrison, Herald circulation manager.

handle only such publications as were "authorized" by the Herald. Prior to November 1, 1937, when the Herald and News instituted a joint distribution plan for the street sale of their newspapers, France told Steuart not to handle the News himself and instructed him to refuse to serve customers who asked for the News in the absence of the newsboy who sold that publication on the same corner. Likewise, Abie Peters,[32] Examiner district manager, instructed Ernie Latham not to handle the Times and Bill Moore, Times district manager, directed Phillip Tellis and John F. Fields not to sell the Examiner.

By arrangement, instituted about November 1, 1937, between the Herald and the News, substantially the same set of newsboys sell both newspapers although they are supplied with the papers by separate district managers representing each publication. The publishers of these newspapers have agreed as to the manner in which the newsboys shall hold and display the respective papers. In accordance with that agreement, district managers of the News and the Herald have instructed the newsboys to hold the Herald, a paper larger in size than the News, on the inside, and the News on the outside in order to insure display of the masthead of each newspaper in such manner as to be visible to the public eye. The agreement also provided that the newsboys specify both newspa-

[32] Whether this is the same person as Alfie Pierce, Examiner district manager, is not clear from the record.

pers by name in their cry. A News district manager instructed one of the newsboys to hold up both newspapers or none but not to display one and not the other in such manner. District Manager Plotkin of the Herald disclosed in his testimony that the newsboys have "had" to display the newspaper prominently by holding it up in the air or, in the parlance of the trade, to "pitch that sheet."

Since its organization, the Union has presented on various occasions grievances to the Companies and has made various efforts to negotiate terms and conditions of employment for the newsboys. The Companies have dealt with union representatives with respect to such grievances, but, as we hereinafter point out, the Companies have refused to negotiate a contract with the Union.

On the basis of the foregoing, we are of the opinion that the Companies have the right to exercise, and do exercise, such control and direction over the manner and means in which the newsboys perform their selling activities as establishes the relationship of employer and employee for the purposes of the Act.[33] Through the district managers, who are authorized to act as the publishers' repre-

---

[33]Section 2 (3) of the Act provides in part: "When used in this Act - (3) The term "employee" shall include any employee . . . . . " In cases where the status of an individual was challenged, we have indicated that the statutory definition of the term "employee" embraces all employees in the conventional as well as legal sense, except those by express provision excluded and that the primary

sentatives in the circulation and distribution of their newspapers, the Companies hire the newsboys by the allotment of corners and spots, thus providing them with a place to work, furnish company-owned equipment and paraphernalia to facilitate newspaper sales, and require the newsboys' attendance at their posts and attention to their work, within customary limits, during relatively definite hours. Moreover, the Companies control the number of papers delivered to the newsboys for the purpose of sale, limit their earnings by the establishment of a fixed "wholesale" and retail price for the newspaper, afford them a return privilege for unsold papers with the exceptions hereinabove noted, and supervise the newsboys' selling activities as to such details of performance as the manner of calling, holding, and displaying the newspaper, and place of its sale within the allotted territory. Furthermore, the Companies at will discharge the newsboys, transfer them to other locations, and lay them off as disciplinary measures. The newsboy is not free to sell where he will; he must operate in a certain area under company-imposed conditions; if he does not succeed in selling, he will be dis-

---

consideration in the determination of the applicability of the statutory definition is whether effectuation of the declared policy and purposes of the Act comprehend securing to the individual the rights guaranteed and protection afforded by the Act. See, for example, Matter of Seattle Post-Intelligencer Department of Hearst Publications, Inc. and Seattle Newspaper Guild, Local 82, 9 N.L.R.B. 1262.

missed. Since the relationship contemplates services of an indefinite duration terminable at the will of either party, the newsboy has no vested interest in the newspaper business. Although he is not carried on the Companies' pay rolls, the newsboy is an integral part of the Companies' distribution system and circulation organization.

The Companies urge that the nature of the control exercised by the Companies and acquiesced in by the newsboys is that incidental to the control exercised by any seller of a commodity who may impose conditions as a part of the terms of sale and who has the privilege to refuse to sell at his caprice. We are not persuaded by that contention. The method by which the newsboys are compensated for their services is a convenient accounting device employed by the Companies to measure the earnings of the newsboys and to provide an incentive for increased newspaper circulation. While the newsboys absorb losses resulting from poor credit risks, this indicates no more than that they, like sales agents in other fields, are not authorized by the Companies to extend credit in the sale of newspapers. Nor is the fact that the newsboys generally sell competing publications with the knowledge and acquiescence of the Companies inconsistent with the newsboys' status as employees.[34] The simultaneous

[34]Some newsboys occasionally hire others to sell newspapers on a commission, or straight stipend, basis. Such employment by a newsboy under the circumstanes disclosed in this record does not affect his own relationship with the Companies.

existence of the employer-employee relationship between an employee and two or more competing employers is not uncommon, especially where compensation is dependent upon and measured by sales. Finally, counsel for the Companies cite California and other local decisions establishing the status of newsboys as independent contractors with respect to the publisher's liability in tort and workmen's compensation proceedings. We do not herein pass upon the nature of the relationship for other purposes, but hold upon this record that the newsboys here involved are within the definition of employees as the term is used in this Act. Accordingly, we find that the newsboys involved in this proceeding are employees within the meaning of Section 2 (3) of the Act.

IV. The question concerning representation

Shortly prior to the filing of the petitions, the Companies were requested by the Union to recognize it as collective bargaining representative of their respective newsboys. The Companies refused to enter into collective bargaining negotiations with the Union prior to determination of the employee status of the newsboys. We find that questions have arisen concerning the representation of employees of the Companies.

V. The effect of the questions concerning representation upon commerce

We find that the questions concerning representation which have arisen, occurring in connection

with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. The appropriate units

The petitions, as amended, allege that the following units are appropriate: (1) all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers,[35] temporary, casual,[36] and part-time newsboys; (2) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; (3) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys; and (4) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys. At the hearing counsel for the Union and counsel for the Herald and

---

[35]A bootjacker is a newsboy who sells to the general public at places other than established corners or spots.

[36]The terms "temporary" and "casual" are used synonymously and they are here intended to have their ordinary meaning.

for the News entered into stipulations with respect to the meaning of the terms contained in the petitions as amended describing the alleged appropriate units in Cases Nos. R-1923 and R-1924.

Thus defined, with respect to the Herald, the term "full-time" newsboy includes a newsboy who sells to the general public all editions,[37] or all except the first edition, of the Herald 5 or more days a week, and excludes, among others, part-time newsboys; the term "part-time" newsboy includes a newsboy who sells to the general public less than six editions of the Herald a day, excluding full-time newsboys as defined above.

With respect to the News, the term "full-time" newsboy includes a newsboy who sells to the general public the fifth and subsequent editions of the News, except the seventh,[38] 5 or more days a week, and excludes, among others, part-time newsboys; the term "part-time" newsboy includes a newsboy who sells to the general public less than five editions of the News a day.

According to the allegations of the petitions, as amended, in Cases Nos. R-1925 and R-1926, the term "established spot," as used in those petitions, refers to a place where a newsboy has engaged in the street sale of the Times or the Examiner, as the

[37]The Herald publishes six editions each day of publication.

[38]The News publishes 10 editions each day of publication. The first, second and third, and seventh editions of the News are reserved for motor routes and suburban dealers and are not sold on the streets of Los Angeles.

case may be, 5 or more days a week for a period of 6 consecutive months or more, and the term "temporary" newsboy, as used in those petitions, includes a newsboy who has engaged in the street sale of the Times or the Examiner, as the case may be, at an established spot for 30 days or less.

Although the Companies circulate and distribute their newspapers in suburban areas outside Los Angeles, the Union has organized only the newsboys who sell newspapers within Los Angeles, except in the case of the Times. In addition to the newsboys selling the Times within Los Angeles, the Union has organized the newsboys selling the Times in Glendale, California, a suburb of Los Angeles.[39] All newsboys engaged in the selling of newspapers in the metropolitan area of Los Angeles are eligible to membership in the Union.

Each of the Companies contends that the unit sought by the Union in its respective case is inappropriate because newsboys,[40] having interests similar to those whom the Union seeks to represent as exclusive bargaining representative, are excluded. The Union desires to exclude bootjackers, temporary, and part-time newsboys since they consist

---

[39]The Times also circulates and distributes its newspaper in suburbs other than Glendale, California.

[40]Including temporary and part-time newsboys, bootjackers, and newsboys engaged in street sales outside Los Angeles in the case of the Herald, News, and Examiner, and outside Los Angeles and Glendale in the case of the Times.

largely of schoolboys who do not depend upon the vending of newspapers for a livelihood and because of the irregularity of their employment. Similarly the Union does not desire to include in the unit the suburban newsboys, other than the Times newsboys in Glendale, California, because organization has not as yet been extended to the suburban group generally. Since those whom the Union desires to be included in the unit are, in general, mature individuals who daily rely upon their earnings from the street vending of newspapers as their source of support, since the Union is the only labor organization existing among the newsboys, and because union organization has not at present extended to suburban newsboys other than the Times newsboys in Glendale, California, we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: (a) All full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; (b) All full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; (c) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys; and (d) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours

a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys. We further find that said units will insure to employees of the Companies the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VII. The determination of representatives

At the hearing lists prepared by the Herald, the News, and the Times were introduced in evidence purporting to show the following approximate current number of newsboys employed by each of these companies:

Herald	219[41]
News	110[42]
Times	627[43]

The Examiner furnished no comparable list; however, Arthur J. Hampson, Examiner P. M. street sales manager, testified that approximately 500[44] newsboys handle the Examiner in territory

---

[41]This number includes full-time newsboys and checkmen. The record does not disclose whether it includes temporary newsboys.

[42]This number refers to checkmen and does not include ordinary newsboys. The News did not furnish a list of full-time newsboys.

[43]This number includes temporary and part-time newsboys and newsboys engaged in street sales in suburbs outside Los Angeles and Glendale, California.

[44]This number refers to those Examiner newsboys in the unit we have found to be appropriate.

covered by night district managers who operate under his supervision.

The Union presented figures which differ widely from those offered by the Times and the Examiner. Pat Commorre, union organizer and Roy Eley, chaiman of the Union's Labor Board Committee, testified that they conducted a personal check to ascertain the number of newsboys within the approximate units. According to the testimony of Commorre or Eley, they found approximately 210[45] full-time Herald newsboys including approximately 110 checkmen; approximately 114 full-time News newsboys,[46] approximately 292 full-time Times newsboys,[47] and approximately 339 full-time Examiner newsboys.[48]

At the hearing the Trial Examiner made statements concerning the claim of representation made by the Union. These statements reveal that the names of at least 121, 66, and 76 newsboys, Herald, News, and Times, respectively, found on the lists mentioned above, appear on signed authorization cards bearing dates between February 28, 1940, and

---

[45]The record does not disclose whether this number includes or excludes temporary newsboys.

[46]The record does not disclose whether this number includes or excludes temporary newsboys.

[47]This number includes an unstated number of temporary newsboys.

[48]This number includes an unstated number of temporary newsboys.

June 19, 1940.[49] The Union tendered 222 authorization cards purporting to be signed by Examiner newsboys. Since that Company furnished no list of its newsboys, the Trial Examiner made no statement concerning the claim of representation made by the Union with respect to the Examiner newsboys. Under these circumstances, we find that the questions of representation which have arisen can best be resolved in elections by secret ballot. We shall accordingly direct that such elections be held. All newsboys in the appropriate units employed by any of the Companies on the date of the Direction of Elections herein, including newsboys who did not work on said date because they were ill or on vacation, and newsboys who were then or shall have since been temporarily laid off, but excluding those who shall have since quit or been discharged for cause, shall be eligible to vote. Newsboys employed by two or more of the Companies within appropriate units shall be entitled to vote in two or more elections as the case may be.

Upon the basis of the above findings of fact and upon the entire record in the cases, the Board makes the following:

---

[49]The Companies objected to the introduction of the Trial Examiner's statements on various grounds. They were received, however, as part of the Board's investigation of the substantiality of the Union's claim and not as a basis for certification upon the record.

Conclusions of Law

1. Questions affecting commerce have arisen concerning the representation of employees of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The following employees of Stockholders Publishing Company, Inc., Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), The Times-Mirror Company, and Hearst Publications, Incorporated (Los Angeles Examiner Department), all of Los Angeles, California, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: (a) all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; (b) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys; (c) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys; and (d) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys.

Direction of Elections

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining, elections by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction of Elections, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the employees of the Companies within the groups described below who were employed by any of the Companies on the date of this Direction of Elections, including employees who did not work on said date because they were ill or on vacation, and employees who were then or shall have since been temporarily laid off, and excluding employees who shall have since quit or been discharged for cause:

(a) All full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) All full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(c) All newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys; and

(d) All newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys; to determine whether or not said employees desire to be represented by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., for the purposes of collective bargaining.

Signed at Washington, D. C., this 9 day of Jan, 1941.

HARRY A. MILLIS,
Chairman.

EDWIN S. SMITH,
Member.

WM. M. LEISERSON,
Member.

[Seal] NATIONAL LABOR
RELATIONS BOARD.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

AFFIDAVIT AS TO SERVICE.

District of Columbia, ss:

I, John S. Lamb, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 9th day of January 1941, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Direction of Elections to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75,
Att: Pat Comorre and Roy Eley,
Room 304, 212 W. 3rd St.,
Los Angeles, Calif.

Gallagher, Wirin & Johnson,
257 S. Spring St.,
Los Angeles, Calif.

Stockholders Publishing Company,
12 & Los Angeles St.,
Los Angeles, Calif.

L. B. Binford and Howard M. Binford,
606 S. Hill St.,
Los Angeles, Calif.

Hearst Publications Incorporated,
1243 Trenton St.,
Los Angeles, Calif.
Flint and McKay,
Att: Edward L. Compton & Donald W. Hamblin,
458 S. Spring St.,
Los Angeles, Calif.
Hearst Publications,
410 Hearst Bldg.,
San Francisco, Calif.
Lawler, Felix and Hall,
Att: John M. Hall, Marcus Matson & A. L. Mitchell,
605 W. Tenth St.,
Los Angeles, Calif.
Times Mirror Company.
Second & Spring,
Los Angeles, Calif.
Cosgrove & O'Neil,
Att: T. B. Cosgrove & F. B. Yoakum, Jr.,
458 S. Spring St.,
Los Angeles, Calif.

/s/ JOHN J. LAMB.

Subscribed and sworn to before me this 9th day of January 1941.

[Seal] /s/ JOHN A. NEVROS
Notary Public, D. C. My Commission Expires Aug. 15, 1943.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

AMENDMENT TO DECISION AND DIRECTION OF ELECTIONS

On January 9, 1941, the National Labor Relations Board issued a Decision and Direction of Elections in the above-entitled proceeding.[1]

In Section VI of the Decision, a stipulation with respect to (1) the definition of full-time newsboys of Stockholders Publishing Company, Inc., engaged in the sale of the News, and (2) the sale of the first three editions of the News within the city of Los Angeles, was erroneously stated. Accordingly,

It is hereby ordered that the Decision be, and the same hereby is, amended by striking therefrom the third paragraph of Section VI of the Decision (appearing on page 17 of the original Decision) and substituting therefor, as a separate paragraph, the following:

> With respect to the News, the term "full-time" newsboy includes a newsboy who sells to the general public, the Five, Six, Eight, Nine, and Ten Star, or the Six, Eight, Nine, and Ten Star editions of the News 5 or more days a week and includes a newsboy who sells the Four Star edition, and previous editions.

[1] 28 N.L.R.B., No. 151.

of the News for a minimum of 4 hours per day between the hours of 4 a. m. and 10 a. m. 5 or more days a week,[38] and excludes, among others, part-time newsboys; the term "part-time" newsboy includes a newsboy who sells to the general public fewer than the Six, Eight, Nine, and Ten Star editions per day and includes a newsboy who sells the Four Star edition of the News less than 4 hours per day.

It is further ordered that the Decision be, and the same hereby is, amended by striking therefrom footnote numbered 38 and substituting therefore, as footnote 38, the following:

[38]The News publishes 10 editions each day of publication. The first, second, third, and seventh editions of the News are generally reserved for motor routes and suburban dealers and, with certain exceptions as to the first 3 editions, are not sold on the streets of Los Angeles.

Signed at Washington, D. C., this 18 day of January 1941.

HARRY A. MILLIS,
Chairman.
EDWIN S. SMITH,
Member.
WM. M. LEISERSON,
Member.

[Seal] NATIONAL LABOR RELATIONS BOARD.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

AFFIDAVIT AS TO SERVICE

District of Columbia—ss.

I John Lamb, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 18th day of January 1941, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Amendment to Decision and Direction of Elections to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75,
Att: Pat Comorre and Roy Eley,
Room 304, 212 W. 23rd St.,
Los Angeles, Calif.

Gallagher, Wirin & Johnson,
257 S. Spring St.,
Los Angeles, Calif.

Stockholders Publishing Company,
12 & Los Angeles,
Los Angeles, Calif.

L. B. Binford and Howard M. Binford,
606 S. Hill St.,
Los Angeles, Calif.

Hearst Publications Incorporated,
1243 Trenton St.,
Los Angeles, Calif.
Flint and McKay,
Att: Edward L. Compton & Donald W. Hamblin,
458 S. Spring St.,
Los Angeles, Calif.
Hearst Publications,
410 Hearst Bldg.,
San Francisco, Calif.
Lawler, Felix & Hall,
Att: John M. Hall, Marcus Matson and A. L. Mitchell,
605 W. Tenth St.,
Los Angeles, Calif.
Times Mirror Co.,
Second & Spring,
Los Angeles, Calif.
Cosgrove & O'Neil
Att: T. B. Cosgrove & F. B. Yoakum, Jr.,
458 S. Spring St.,
Los Angeles, Calif.

/s/ JOHN LAMB.

Subscribed and sworn to before me this 18th day of January 1941.

[Seal] /s/ JOHN A. NEVROS

Notary Public, D. C. My Commission Expires Aug. 15, 1943.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

SECOND AMENDMENT TO DIRECTION OF ELECTIONS

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued its Decision and Direction of Elections in the above-entitled proceedings,[1] directing that elections be held within thirty (30) days from the date of the said Direction of Elections under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California). The Board, having been advised by the Regional Director that a longer period within which to hold the elections was necessary, hereby amends the Direction of Elections by striking therefrom the words "not later than thirty (30) days from the date of this Direction of Elections," and substituting therefor the words "not later than sixty (60) days from the date of this Direction of Elections."

Signed at Washington, D. C., this 31 day of Jan., 1941.

HARRY A. MILLIS,
Chairman.
EDWIN S. SMITH,
Member.

[1] 28 N. L. R. B., No. 151.

WM. M. LEISERSON,
Member.

(Seal) NATIONAL LABOR RELATIONS BOARD

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

AFFIDAVIT AS TO SERVICE

District of Columbia—ss.

I, John Lamb, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 31st day of January 1941, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Second Amendment to Direction of Elections to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.
Att: Pat Comorre and Roy Eley,
Room 304, 212 W. 3rd St.,
Los Angeles, California.

Gallagher, Wirin & Johnson,
257 South Spring Street,
Los Angeles, California.

Stockholders Publishing Company,
12 & Los Angeles St.
Los Angeles, California.
L. B. Binford and Howard M. Binford,
606 S. Hill St.,
Los Angeles, California.
Hearst Publications, Incorporated,
1243 Trenton Street,
Los Angeles, California.
Flint and McKay,
Att: Mr. Edward L. Compton and Mr. Donald W. Hamblin,
458 S. Spring Street,
Los Angeles, California.
Hearst Publications,
410 Hearst Building,
San Francisco, California.
Lawler, Felix and Hall,
Att: John M. Hall, Marcus Matson, and A. L. Mitchell,
605 W. Tenth Street,
Los Angeles, California.
Times Mirror Co.,
2nd & Spring,
Los Angeles, California.
Cosgrave & O'Neil,
Att: T. B. Cosgrave & F. B. Yoakum, Jr.,
458 S. Spring St.
Los Angeles, California.

/s/ JOHN LAMB

Subscribed and sworn to before me this 31st day of January 1941

[Seal] JOHN A. NEVROS,
Notary Public, D. C.

My commission expires Aug. 15, 1943.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

ORDER DENYING MOTION

The Board having issued a Decision and Direction of Elections on January 9, 1941, and an Amendment to Decision and Direction of Elections on January 18, 1941, and a Second Amendment to Direction of Elections on January 31, 1941, and, thereafter, on March 17, 1941, Stockholders Publishing Company, Inc., having filed a "Motion of Stockholders Publishing Company, Inc., to Reopen Proceedings (and for Modification of Decision)," and the Board having duly considered the matter,

It Is Hereby Ordered that the said Motion be, and it hereby is, denied.

Dated, Washington, D. C., March 21, 1941.

By direction of the Board:

BEATRICE M. STERN,
Acting Secretary.

[Title of Board and Cause.]

Case No. R-1924

STIPULATION

It Is Hereby Stipulated and Agreed by and between Hearst Publications, Incorporated, (Los Angeles Evening Herald & Express Department) by its counsel, Flint & MacKay, by Edward L. Compton, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., by its representatives, and, National Labor Relations Board by William R. Walsh, its attorney, that

Whereas, the National Labor Relations Board in its original Decision and Direction of Elections in Part 6, Page 17, paragraph 1 thereof, defined the term newsboys as relates to the Los Angeles Herald & Express, which definition is predicated upon the record in these proceedings, and, particularly upon Board's Exhibit 8, and

Whereas, the said Decision and Direction of Elections and record, and particularly Board's Exhibit 8 does not clearly define the term newsboys as applies to the Los Angeles Herald & Express,

Now, Therefore, It Is Hereby Stipulated and Agreed by and between the parties hereto, that the Board may amend its original Decision and Direction of Elections by striking from Part VI, paragraph (1) thereof, the first paragraph on page 17 thereof purporting to define "full time" and "part time" newsboys engaged in selling the Los Angeles Evening Herald and Express and substituting therefor the following:

"Thus defined with respect to the Los Angeles Evening Herald and Express, the term "full time" newsboy means a newsboy who regularly sells to the public five or more editions a day five or more days a week: The term "part time" newsboy means a newsboy who sells to the public less than five editions a day or who sells to the public all or any of the daily editions published by the Los Angeles Evening Herald and Express less than five days a week."

It Is Further Stipulated and Agreed by and between the parties hereto that the Hearst Publications, Incorporated, (Los Angeles Evening Herald & Express Department) does not waive any of the objections heretofore made to the jurisdiction of the National Labor Relations Board over the Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) in so far as the said National Labor Relations Act relates to newsboys heretofore referred to or any of them.

It Is Further Stipulated that the Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), by entering into this Stipulation does not admit, consent or agree that the newsboys above referred to, or any of them, are employees of the Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) within the purview of the National Labor Relations Act or otherwise.

Dated at Los Angeles, California, this 29 day of March, 1941.

HEARST PUBLICATIONS, INCORPORATED, (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT)
FLINT & MacKAY,
By EDWARD L. COMPTON,
Attorney
LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.,
By PAT COMORRE 4/1/41

.....

WILLIAM R. WALSH,
Attorney, National Labor Relations Board.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

THIRD AMENDMENT TO DIRECTION OF ELECTIONS

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Elections in the above-entitled proceedings,[1] the elections to be held not later than

---

[1] 28 N. L. R. B., No. 151.

thirty (30) days from the date of the Direction of Elections, under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California). On January 18, 1941, the Board issued an Amendment to Direction of Elections.[2] On January 31, 1941, the Board issued a Second Amendment to Direction of Elections,[3] providing that the elections should be held within sixty (60) days from the date of the Direction of Elections instead of within thirty (30) days therefrom.

The Board, at the request of the Regional Director, hereby amends the Direction of Elections, as amended, by striking therefrom the words "not later than sixty (60) days from the date of this Direction of Elections" and substituting therefor the words "not later than ninety (90) days from the date of this Direction of Elections."

Signed at Washington, D. C., this 29 day of Mar., 1941.

HARRY A. MILLIS,
Chairman
EDWIN S. SMITH,
Member
WM. M. LEISERSON
Member
NATIONAL LABOR RELATIONS BOARD.

[Seal]

---

[2] 29 N. L. R. B., No. 16.

[3] 29 N. L. R. B., No. 16a.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, John Lamb, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 29th day of March 1941, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Third Amendment to Direction of Elections to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75, C I O
Pat Comorre and Roy Eley,
Rm. 304, 212 W. Third St.,
Los Angeles, Calif.

Gallagher, Wirin & Johnson,
257 South Spring St.,
Los Angeles, Calif.

Stockholders Publishing Company,
12th and Los Angeles St.,
Los Angeles, Calif.

L. B. Binford and Howard M. Binford,
606 S. Hill St.,
Los Angeles, Calif.

Hearst Publications, Inc.,
1243 Trenton St.,
Los Angeles, Calif.
Flint and McKay,
Att: Mr. Edward L. Compton, Mr. Donald W. Hamblin,
458 S. Spring St.,
Los Angeles, Calif.
Hearst Publications,
410 Hearst Bldg.,
San Francisco, Calif.
Lawler, Felix and Hall,
Att: John M. Hall, Marcus Matson, A. L. Mitchell,
605 W. Tenth St.,
Los Angeles, Calif.
Times Mirror Co.,
2nd & Spring,
Los Angeles, Calif.
Cosgrave & O'Neil,
Att: T. B. Cosgrave, F. B. Yoakum, Jr.,
458 S. Spring St.,
Los Angeles, Calif.

JOHN LAMB

Subscribed and sworn to before me this 29th day of March 1941.

(Seal) IRVING HELBLING

My commission expires Sept. 2, 1945.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

FOURTH AMENDMENT TO DECISION AND DIRECTION OF ELECTIONS

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued its Decision and Direction of Elections in the above-entitled proceeding,[1] directing that elections be held within thirty (30) days from the date of the said Direction of Elections, under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California). On January 18, 1941, the Board issued an Amendment to Direction of Elections.[2] On January 31, 1941, the Board issued a Second Amendment to Direction of Elections.[3] On March 29, 1941, the Board issued a Third Amendment to Direction of Elections,[4] providing that the elections should be held within ninety (90) days from the date of the Direction of Elections.

The Board, having entered into a stipulation, dated March 29, 1941, with Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and Los Angeles Newsboys Lo-

---

[1] 28 N. L. R. B., No. 51.
[2] 29 N. L. R. B., No. 16.
[3] 29 N. L. R. B., No. 16a.
[4] 30 N. L. R. B., No. 110.

cal Industrial Union No. 75, C. I. O., providing, inter alia, as follows:

> It Is Hereby Stipulated and Agreed by and between the parties hereto, that the Board may amend its original Decision and Direction of Elections by striking from Part VI, paragraph (1) thereof, the first paragraph on page 17 thereof purporting to define "full time" and "part time" newsboys engaged in selling the Los Angeles Evening Herald and Express and substituting therefor the following:
>
> > Thus defined with respect to the Los Angeles Evening Herald and Express, the term "full time" newsboys means a newsboy who regularly sells to the public five or more editions a day five or more days a week: The term "part time" newsboy means a newsboy who sells to the public less than five editions a day or who sells to the public all or any of the daily editions published by the Los Angeles Evening Herald and Express less than five days a week.

The Board, having entered into a stipulation, dated March 29, 1941, with Stockholders' Publishing Company, Inc., and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., providing, inter alia, as follows:

> Whereas, the National Labor Relations Board by its Amendment to the Decision and Direction of Elections dated January 18, 1941,

amended its original Decision and Direction of Elections by striking therefrom the third paragraph of Section 6 of the Decision and Direction of Elections (appearing on Page 17 of the original Decision and Direction of Elections) and substituting therefor a separate paragraph which reads as follows:

> With respect to the News, the term "full time newsboy includes a newsboy who sells to the general public, the Five, Six, Eight, Nine, and Ten Star, or the Six, Eight, Nine, and Ten Star editions of the News 5 or more days a week and includes a newsboy who sells the Four Star edition, and previous editions of the News for a minimum of 4 hours per day between the hours of 4 a. m. and 10 a. m. 5 or more days a week, (footnote) and excludes, among others, part-time newsboys; the term "part time" newsboy includes a newsboy who sells to the general public fewer than the Six, Eight, Nine, and Ten Star editions per day and includes a newsboy who sells the Four Star Edition of the News less than 4 hours per day.

and

Whereas, the Amendment to the Decision and Direction of Elections does not accurately describe the terms therein purported to be described,

Now, Therefore, It Is Hereby Stipulated and

Agreed by and between the parties hereto that the National Labor Relations Board may further amend its Decision and Direction of Elections by striking the paragraph above-quoted from the Amendment to the Decision and Direction of Elections and substituting therefor the following:

> With respect to the News, the term "full-time" newsboy means a newsboy who sells to the general public Five, Six, Eight, Nine and Ten Star editions, or Six, Eight, Nine and Ten Star editions of the News, 5 or more days a week, and means a newsboy who sells the Four Star edition and previous editions of the News for a minimum of four hours per day between the hours of 4 o'clock a. m. and 10 o'clock a. m., five or more days a week.

and,

The Board, having been advised by the Regional Director that a longer period within which to hold the elections is necessary,

It Is Hereby Ordered that said stipulations be, and they hereby are, made a part of the record in this proceeding;

It Is Further Ordered that the Decision, as amended, be, and the same hereby is, amended by striking therefrom the second paragraph of Section VI of the Decision (appearing on page 17 of the original decision) and substituting therefor, as a separate paragraph, the following:

> Thus defined with respect to the Los Angeles Evening Herald and Express, the term "full-

time" newsboy means a newsboy who regularly sells to the public five or more editions a day five or more days a week: The term "part time" newsboy means a newsboy who sells to the public less than five editions a day or who sells to the public all or any of the daily editions published by the Los Angeles Evening Herald and Express less than five days a week.

It Is Further Ordered that the Decision, as amended, be, and the same hereby is, amended by striking therefrom the third paragraph of Section VI of the Decision (appearing on page 17 of the original decision) and substituting therefor, as a separate paragraph, the following:

With respect to the News, the term "full-time" newsboy means a newsboy who sells to the general public Five, Six, Eight, Nine and Ten Star editions, or Six, Eight, Nine and Ten Star editions of the News, 5 or more days a week, and means a newsboy who sells the Four Star edition and previous editions of the News for a minimum of four hours per day between the hours of 4 o'clock a. m. and 10 o'clock a. m., five or more days a week.

It Is Further Ordered that the Direction of Elections, as amended, be, and the same hereby is, amended by striking therefrom the words "not later than ninety (90) days from the date of this Direction of Elections," and substituting therefor the words "not later than one hundred

and twenty (120) days from the date of this Direction of Elections."

Signed at Washington, D. C., this 12 day of April 1941.

HARRY A. MILLIS,
Chairman
EDWIN S. SMITH,
Member
WM. M. LEISERSON,
Member
NATIONAL LABOR RELATIONS BOARD
(Seal)

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Virgil Daniels, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 12th day of April, 1941, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Fourth Amendment to Decision and Direction of Elections to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.,
Att: Pat Comorre and Roy Eley,
Room No. 304,
212 West 3rd Street,
Los Angeles, California.

Gallagher, Wirin & Johnson,
257 South Spring Street,
Los Angeles, California.

Stockholders Publishing Company,
12th and Los Angeles Street,
Los Angeles, California.

L. B. Binford and Howard M. Binford,
606 South Hill Street,
Los Angeles, California.

Hearst Publications, Incorporated,
1243 Trenton Street,
Los Angeles, California.

Flint & McKay,
Att: Edward L. Compton and Donald W. Hamblin,
458 South Spring Street,
Los Angeles, California.

Hearst Publications,
410 Hearst Building,
San Francisco, California.

Lawler, Felix and Hall,
Att: John M. Hall, Marcus Matson, and A. L. Mitchell
605 West 10th Street,
Los Angeles, California.

Times Mirror Company,
2nd and Spring Street,
Los Angeles, California.
Cosgrove & O'Neil,
Att: T. B. Cosgrove and F. B. Yoakum, Jr.,
458 South Spring Street,
Los Angeles, California.

/s/ VIRGIL DANIELS

Subscribed and sworn to before me this 12th day of April, 1941.

(Seal) IRVING HELBLING

My commission expires Sept. 2, 1945.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

FIFTH AMENDMENT TO DIRECTION OF ELECTIONS

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued its Decision and Direction of Elections in the above-entitled proceeding,[1] and thereafter issued various amendments thereto.[2]

The Board, having been advised by the Regional

---

[1] 28 N. L. R. B., No. 51.

[2] 29 N. L. R. B., No. 16; 29 N. L. R. B., No. 16a; 30 N. L. R. B., No. 110; 30 N. L. R. B., No. 110a.

Director that a longer period within which to hold the elections is necessary, hereby amends the Direction of Elections, as amended, by striking therefrom the words "not later than one hundred and twenty (120) days from the date of this Direction of Elections" and substituting therefor the words "not later than one hundred and thirty-five (135) days from the date of this Direction of Elections."

Signed at Washington, D. C., this 9 day of May 1941.

HARRY A. MILLIS,
Chairman
EDWIN S. SMITH,
Member
WM. M. LEISERSON,
Member
NATIONAL LABOR RELATIONS BOARD

[Seal]

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

Cases Nos. R-1923
R-1924
R-1925
R-1926

District of Columbia, ss:

I, John Lamb, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 9th day of May

1941, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Fifth Amendment to Direction of Elections to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.,
Att: Pat Comorre and Roy Eley,
Room 304, 212 W. 3rd Street,
Los Angeles, Calif.

Gallagher, Wirin & Johnson,
257 South Spring St.,
Los Angeles, Calif.

Stockholders Publishing Company,
12 & Los Angeles St.,
Los Angeles, Calif.

L. B. Binford and Howard M. Binford,
606 S. Hill St.,
Los Angeles, Calif.

Hearst Publications, Inc.,
1243 Trenton St.,
Los Angeles, Calif.

Flint and McKay,
Att: Mr. Edward L. Compton and Mr. Donald W. Hamblin,
458 S. Spring St.
Los Angeles, Calif.

Hearst Publications,
410 Hearst Bldg.,
San Francisco, Calif.

Lawler, Felix and Hall,
Att: John M. Hall, Marcus Matson, and A. L. Mitchell,
605 W. Tenth St.,
Los Angeles, Calif.
Times Mirror Co.,
2nd & Spring,
Los Angeles, Calif.
Cosgrove & O'Neil,
Att: T. B. Cosgrove and F. B. Yoakum, Jr.
458 S. Spring St.
Los Angeles, Calif.

/s/ JOHN LAMB

Subscribed and sworn to before me this 9th day of May, 1941.

[Seal] IRVING HELBLING

My commission expires Sept. 2, 1945.

DAILY NEWS
Los Angeles, California

May. 12, 1941.

National Labor Relations Board,
Twenty-first Region,
Federal Bldg.,
Los Angeles, Calif.

Re Case No. R-1923

Stockholders Publishing Company, Inc.
Respondent.

Gentlemen:

Comes now, Stockholders Publishing Company, Inc., and hereby challenges collectively and sev-

erally, all votes of all newsboys which may be cast at the election called by the National Labor Relations Board to be held on the 14th day of May, 1941, between the hours of 10 o'clock a. m., and 4:00 o'clock p. m., and 7:00 o'clock p. m. and 10:00 o'clock p. m., upon the following grounds:

(a) That the National Labor Relations Board never has had nor does it now have, jurisdiction to order said election or to proceed under Section 9 or any other section of the National Labor Relations Act.

(b) That no newsboy, either within or without the "appropriate unit" as defined by the National Labor Relations Board is an employee of respondent as a newsboy.

(c) That the National Labor Relations Board is without jurisdiction to hold said election.

Yours very truly,
STOCK HOLDERS PUBLISHING COMPANY, INC.
By /s/ R. L. SMITH
ROBERT L. SMITH
Executive Vice-President

RLS:mn

Copy

[Title of Board and Cause.]

Case No. XXI-R-1062
Consolidated with XXI-R-927
XXI-R-928, and XXI-R-1084

OBJECTIONS TO VALIDITY OF DIRECTION OF ELECTIONS AND EXCEPTIONS TO THE SAME; BLANKET OBJECTION TO THE BALLOT OF EACH AND EVERY PERSON PARTICIPATING IN SAID ELECTIONS (TIMES UNIT)

Comes now The Times Mirror Co., a corporation, and appearing specially, files this, its blanket objection to the votes and ballots of all persons whose names appear on lists prepared under the direction of the acting regional director and to the votes and ballots of all other persons who may vote in the election heretofore on January 9, 1941, directed herein; and said The Times Mirror Co. objects to the validity of said Direction of Elections and excepts to said Direction of Elections and to the election to be held thereunder. Said objections and exceptions are based on each and all of the following grounds:

1. The relationship between The Times Mirror Co. and said voters (the newsboys engaged in the street sale of Los Angeles Times within Los Angeles and Glendale, California) is not subject to the jurisdiction of the National Labor Relations Board.

2. Each and all of said voters (the newsboys engaged in the street sale of Los Angeles Times

within Los Angeles and Glendale, California) is and are independent contractors.

3. No question affecting commerce has arisen or can arise concerning the representation of said voters in their relationship with The Times Mirror Co.

4. The National Labor Relations Board has no jurisdiction over The Times Mirror Co. or the business conducted by it.

5. The relations of The Times Mirror Co. with said voters are not subject to the jurisdiction of the National Labor Relations Board.

6. No claimed labor dispute between The Times Mirror Co. and said voters can affect commerce within the meaning of the National Labor Relations Act.

The Times Mirror Co. reserves the right to make individual challenges to the vote and/or ballot of each newsboy in said election other than objections going to the validity of the Direction of Elections and the assertion of any such challenge shall not constitute a waiver of these objections and exceptions.

Dated, May 9th, 1941.

COSGROVE & O'NEIL
T. B. COSGROVE
F. B. YOAKUM, JR.
By T. B. COSGROVE
Attorneys for The Times Mirror Co.

[Title of Board and Causes.]

Case No. XXI-R-1084

OBJECTIONS TO VALIDITY OF DIRECTION OF ELECTIONS AND EXCEPTIONS TO THE SAME: BLANKET OBJECTION TO THE BALLOT OF EACH AND EVERY PERSON PARTICIPATING IN SAID ELECTIONS (LOS ANGELES EXAMINER UNIT)

Comes now Hearst Publications, Incorporated (Los Angeles Examiner Department) and appearing specially, files this, its blanket objection to the votes and ballots of all persons whose names appear on lists prepared under the direction of the acting regional director and to the votes and ballots of all other persons who may vote in the election heretofore on January 9, 1941, directed herein; and said Hearst Publications, Incorporated (Los Angeles Examiner Department) objects to the validity of said Direction of Elections and excepts to said Direction of Elections and to the election to be held thereunder. Said objections and exceptions are based on each and all of the following grounds:

1. None of the newsboys selling the Los Angeles Examiner in Los Angeles, California are employees of Hearst Publications, Incorporated (Los Angeles Examiner Department).

2. The relationship between Hearst Publications, Incorporated (Los Angeles Examiner Department) and said voters (the newsboys engaged in the street sale of Los Angeles Examiner within Los Angeles, California) is not subject to

the jurisdiction of the National Labor Relations Board.

3. Each and all of said voters (the newsboys engaged in the street sale of Los Angeles Examiner within Los Angeles, California) is and are independent contractors.

4. No question affecting commerce has arisen or can arise concerning the representation of said voters in their relationship with Hearst Publications, Incorporated (Los Angeles Examiner Department).

5. The National Labor Relations Board has no jurisdiction over Hearst Publications, Incorporated (Los Angeles Examiner Department) or the business conducted by it.

6. The relations of Hearst Publications, Incorporated (Los Angeles Examiner Department) with said voters are not subject to the jurisdiction of the National Labor Relations Board.

7. No claimed labor dispute between Hearst Publications, Incorporated (Los Angeles Examiner Department) and said voters can affect commerce within the meaning of the National Labor Relations Act.

8. The unit defined by the Board is not, in fact, an appropriate bargaining unit within the intent of the National Labor Relations Act.

Hearst Publications, Incorporated (Los Angeles Examiner Department) reserves the right to make individual challenges to the vote or ballot of each newsboy in said election and the assertion of any such challenge shall not constitute a waiver of the

objections and exceptions herein stated, or of the contentions heretofore made in these proceedings.

Dated: May 13, 1941.

Respectfully submitted,

LAWLER, FELIX & HALL
A. LAURENCE MITCHELL
JOHN M. HALL
By OSCAR LAWLER
Attorneys for Hearst Publications, Incorporated (Los Angeles Examiner Department)

[Title of Board and Causes.]

Case No. XXI-R-928

To the National Labor Relations Board, Washington, D. C., and to William R. Walsh, Acting Director, Twenty-first Region, National Labor Relations Board, Federal Building, Los Angeles, California:

Comes now the respondent, Hearst Publications Incorporated (Los Angeles Evening Herald & Express Department) and hereby challenges the vote of each and every voter or person attempting to vote at the election ordered by the National Labor Relations Board to be held on May 14, 1941, at the Pacific Electric Theater, 627 South Los Angeles Street, Los Angeles, California, and objects to the holding of said election upon the following grounds:

1. That the National Labor Relations Board has no jurisdiction over respondent.

2. That respondent is not engaged in commerce as that term is defined in the National Labor Relations Act.

3. That none of the voters or prospective voters, and none of the persons within the unit approved by the Board, in so far as their news vending activities are concerned, are employees of respondent.

4. That a cessation of the news vending activities of any voter or prospective voter or any person within the unit approved by the Board. would not or could not burden or obstruct commerce or the free flow of commerce.

Respondent incorporates herein by reference all of the objections to this proceeding contained in its Motion to Dismiss Amended Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act dated June 6, 1940, and filed herein June 6, 1940.

By having observers present at said election and by permitting said observers to exercise the privileges of National Labor Relations Board observers Respondent does not acquiesce in the Findings of Fact, Conclusions of Law and Order of the National Labor Relations Board, and does not recede from or waive in any respect its objections hereinabove stated and its position that the National Labor Relations Board has no jurisdiction to order or hold said or any election or to certify representatives.

Dated: May 14, 1941.

HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT)
By FLINT & MacKAY
By /s/ DONALD W. HAMBLIN
Its Attorneys

Copy

[Title of Board and Causes.]

Case No. R-1923

ELECTION REPORT

Pursuant to the Rules and Regulations of the National Labor Relations Board—Series 2, as amended, Article III, Section 9, the undersigned hereby makes the following Election Report.

On January 9, 1941 and in amendments to its Direction of Election thereafter issued, the National Labor Relations Board directed that an election by secret ballot be conducted among all full time news boys and checkmen who were engaged to sell the News within Los Angeles, California on or before January 9, 1941, the date of the Direction of Election, including employees who did not work on said date because they were ill or on vacation and employees who were then or since temporarily laid off, and excluding bootjackers, temporary, casual, and part time news boys and employees who quit or were discharged for cause after the date of the Order, to determine whether they desire to be represented for purposes of collective bargaining by Los

Angeles News Boys Local Industrial Union No. 75, affiliated with the Congress of Industrial Organizations.

Pursuant to said Direction of Election the undersigned conducted said secret ballot at Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, May 14, 1941 between the hours of 10:00 a. m. and 10:00 p. m.

The ballots used in the conduct of said secret ballot were in the form attached to this Report as Appendix 1 and made a part hereof. Said secret ballot was conducted in a manner conforming to the directions for the conduct of said secret ballot heretofore issued by the National Labor Relations Board, and full opportunity was accorded to all parties to this investigation to participate therein and to make challenges.

The ballots of thirty-six (36) voters were challenged. Since determination of these challenged ballots will not change the results of the election, no determination with respect to these challenges will be made.

On the 12th day of May, 1941, Stockholders Publishing Company, Inc., filed a letter "Re Case No. R-1923, Stockholders Publishing Company, Inc., Respondent.

"Gentlemen:

"Comes now, Stockholders Publishing Company, Inc., and hereby challenges collectively and severally, all votes of all newsboys which may be cast at the election called by the National Labor Relations Board to be held

on the 14th day of May, 1941, between the hours of 10:00 o'clock a. m. and 4:00 o'clock 4 p. m., and 7:00 o'clock p. m. and 10:00 o'clock p. m., upon the following grounds:

"(a) That the National Labor Relations Board never has had nor does it now have, jurisdiction to order said election or to proceed under Section 9 or any other section of the National Labor Relations Act.

"(b) That no newsboy, either within or without the "appropriate unit" as defined by the National Labor Relations Board is an employee of respondent as a newsboy.

"(c) That the National Labor Relations Board is without jurisdiction to hold said election.

"Yours very truly,
STOCKHOLDERS PUBLISHING COMPANY, INC.
By (Signed) R. L. SMITH
ROBERT L. SMITH
Executive Vice President"

Examination of this objection indicates that the grounds for their objection are based upon facts which had been considered by the Board in its Direction of Election. The matters once having been before the Board and determined by it, the undersigned hereby over-rules the objection contained in the Company's letter.

The undersigned hereby certifies that said secret ballot was fairly and impartially conducted and

that the ballots cast were duly and fairly counted under his supervision, and that statements to such effect from the tellers have been filed with the undersigned.

Your attention is called to Article III, Section 9, of the Rules and Regulations—Series 2, as amended, issued by the National Labor Relations Board which provides that within five (5) days after the serving of the Election Report the parties to the proceedings may file with the Acting Regional Director any objections to the ballots or the Election Report.

Unless objections to this Report are filed within five (5) days after the receipt thereof, the Acting Regional Director will destroy all marked ballots in this election.

The undersigned hereby makes his findings with respect to the results of said secret ballot:

Total on Eligibility List	349
Total Ballots Cast	247
Total Ballots Challenged	36
Total Blank Ballots	1
Total Void Ballots	1
Total Ballots Not Counted	38
Total Ballots Counted	209
Total Votes for Los Angeles News Boys Local Industrial Union No. 75, C. I. O.	191
Total Votes against Los Angeles News Boys Local Industrial Union No. 75, C. I. O.	18

Dated at Los Angeles, California, this 17th day of May, 1941.

WILLIAM R. WALSH
Acting Regional Director, Twenty-first Region National Labor Relations Board, 808 U. S. Post Office & Court House, Los Angeles, California.

[Title of Board and Causes.]

Case No. R-1924

ELECTION REPORT

Pursuant to the Rules and Regulations of the National Labor Relations Board—Series 2, as amended, Article III, Section 9, the undersigned hereby makes the following Election Report.

On January 9, 1941 and in amendments to its direction of election thereafter issued, the National Labor Relations Board directed that an election by secret ballot be conducted among all full time news boys and checkmen who were engaged to sell the Evening Herald & Express within Los Angeles, California, on or before January 9, 1941, the date of the Direction of Election, including employees who did not work on said date because they were ill or on vacation and employees who were then or since temporarily laid off, and excluding bootjackers, temporary, casual, and part time news boys and employees who quit or were discharged for cause

after the date of the Order, to determine whether they desire to be represented for purposes of collective bargaining by Los Angeles News Boys Local Industrial Union No. 75, affiliated with the Congress of Industrial Organizations.

Pursuant to said Direction of Election the undersigned conducted said secret ballot at Pacific Electriet Theatre, 627 South Los Angeles Street, Los Angeles, California, May 14, 1941 between the hours of 10:00 a. m. and 10:00 p. m.

The ballots used in the conduct of said secret ballot were in the form attached to this Report as Appendix 1 and made a part hereof. Said secret ballot was conducted in a maner conforming to the directions for the conduct of said secret ballot heretofore issued by the National Labor Relations Board, and full opportunity was accorded to all parties to this investigation to participate therein and to make challenges.

The ballots of Twenty-nine voters were challenged. Since determination of these challenged ballots will not change the results of the election, no determination with respect to these challenges will be made.

On the 14th day of May, 1941, Hearst Publications Incorporated (Los Angeles Evening Herald & Express Department) filed "In the Matter of Hearst Publications Incorporated (Los Angeles Evening Herald & Express Department) and Los Angeles Newsboys Local Ind. Union No. 75, C. I. O. Petitioner. Case No. XXI-R-928 Consolidated

with Case No. XXI-R-927 and Case No. XXI-R-1062. To the National Labor Relations Board, Washington, D. C., and to William R. Walsh, Acting Director, Twenty-first Region, National Labor Relations Board, Federal Building, Los Angeles, California:"

The above-entitled instrument contains a general challenge to all voters on the general grounds the National Labor Relations Board does not have jurisdiction over Respondent and that the individuals referred to as voters are not employees of Respondent.

Examination of this objection indicates that the grounds for their objection are based upon facts which had been considered by the Board in its Direction of Election. The matters once having been before the Board and determined by it, the undersigned hereby overrules the objection contained in the aforementioned instrument.

The undersigned hereby certifies that said secret ballot was fairly and impartially conducted and that the ballots cast were duly and fairly counted under his supervision, and that statements to such effect from the tellers have been filed with the undersigned.

Your attention is called to Article III, Section 9, of the Rules and Regulations—Series 2, as amended, issued by the National Labor Relations Board which provides that within five (5) days after the serving of the Election Report the parties to the proceedings may file with the Acting Regional Di-

rector any objections to the ballot or the Election Report.

Unless objections to this Report are filed within five (5) days after the receipt thereof, the Acting Regional Director will destroy all marked ballots in this election.

The undersigned hereby makes his findings with respect to the results of said secret ballot:

Total on Eligibility List	209
Total Ballots Cast	179
Total Ballots Challenged	29
Total Blank Ballots	1
Total Void Ballots	0
Total Ballots Not Counted	30
Total Ballots Counted	149
Total Votes for Los Angeles News Boys Local Industrial Union No. 75, C. I. O.	138
Total Votes against Los Angeles News Boys Local Industrial Union No. 75, C. I. O.	11

WILLIAM R. WALSH
Acting Regional Director, Twenty-first Region National Labor Relations Board, 808 U. S. Post Office & Court House, Los Angeles, California

Dated at Los Angeles, California, this 17th day of May, 1941.

[Title of Board and Causes.]

Case No. R-1925

ORDER OVERRULING "OBJECTIONS TO VALIDITY OF DIRECTION OF ELECTIONS AND EXCEPTIONS TO THE SAME; BLANKET OBJECTION TO THE BALLOT OF EACH AND EVERY PERSON PARTICIPATING IN SAID ELECTIONS (TIMES UNIT)"

The Board, on January 9, 1941, having issued a Decision and Direction of Election in the above-entitled cases, and thereafter having issued Amendments to the said Decision and Direction of Election; and thereafter, on May 14, 1941, Attorneys for the Times Mirror Company having filed "Objections to Validity of Direction of Elections and Exceptions to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Times Unit)"; and the Board having duly considered the matter,

It is hereby ordered that the said "Objections to Validity of Direction of Elections and Exceptions to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Times Unit)" be, and they hereby are, overruled.

Dated, Washington, D. C., May 21st, 1941.

By direction of the Board:

[Seal] BEATRICE M. STERN
Beatrice M. Stern
Executive Secretary

[Title of Board and Causes.]

Case No. R-1923

OBJECTIONS OF STOCKHOLDERS PUBLISHING COMPANY, INC., TO ELECTION REPORT AND THE CONDUCTING THEREOF

Stockholders Publishing Company, Inc., hereinafter referred to as the "Objector," appearing for itself only, and at all times reserving all rights to object to the jurisdiction of said Board, and appearing specially and only for the purpose of filing the within objections pursuant to Section 203.9 of the rules and regulations of the National Labor Relations Board, Series 2, objects to said election report and the manner of conducting said election which was held on the 14th day of May, 1941, between the hours of 10:00 o'clock a. m. and 10:00 o'clock p. m., and objects to the report of the secret ballot dated May 14, 1941, and served upon the Objector May 19, 1941, and objects to the conducting of the election at all by said National Labor Relations Board. Said objections are made upon the following grounds, to-wit:

(a) That the National Labor Relations Board has and had no jurisdiction over the Objector, in that

1. Objector is not engaged in interstate commerce or in any business affecting commerce with foreign countries.

2. Objector is not engaged in interstate or foreign commerce and its business does not affect interstate or foreign commerce.

3. No one of the persons casting a ballot was or is an employee of Objector.

4. Each of the persons casting a ballot in the election was and is an independent merchant engaged in the business of selling newspapers for various publishers and periodicals for various publishers.

5. The cessation of the work of the persons casting ballots at said election aforesaid, in selling and disposing of newspapers and periodicals, would not obstruct commerce or prevent the free flow thereof.

(b) That said election was illegal and void in that:

1. The persons casting ballots at said election were not employees of the Objector.

2. Persons casting ballots at said election were engaged as independent merchants in the sale of two or more newspapers published by two or more different publishers, and that most of said persons were engaged also in the business of selling various other publications and magazines, including, without limiting the generality of the foregoing statement, magazines published by the Curtis Publishing Company, Macfadden Publications, the Crowell Publishing Company, Time, Inc., etc.

3. The persons casting ballots at said purported election were permitted and allowed to cast separate votes on the same question as an alleged employee of Objector as well as an alleged employee of Hearst Publications Incor-

ported (Los Angeles Evening Herald & Express Department).

4. Such persons were not required to elect as to the election in which they chose to participate.

5. All or the majority of the persons participating in said election cast their vote in both elections which were then and there being simultaneously held in connection with Objector and said Hearst Publications Incorporated (Los Angeles Evening Herald & Express Department).

6. At such time all or nearly all of such persons voting at both of such elections were also engaged in the busines of vending and selling as independent merchants, sundry other magazines or newspapers or periodicals or all three.

(c) That the acts of the National Labor Relations Board in ordering said election and in conducting and carrying on such purported election are all illegal and void for the same reasons set forth above respecting the illegality and invalidity of the purported election.

(d) That the acts of said Board in ordering said election and in conducting the same and in rendering the report thereupon are all acts beyond the jurisdiction of said Board, and is an attempt by said Board to abridge the freedom of the Press, and to unlawfully restrain or regulate the proper dissemination of news to the public.

Objector at all times reserves unto itself the

right to urge any and all objections heretofore interposed by it, as well as those presently interposed going to the jurisdiction of the National Labor Relations Board in connection with such purported election, or the report thereof, or in connection with any and all proceedings leading thereto.

Wherefore Objector prays that said election report herein referred to be nullified and stricken from the records of the proceedings; that all proceedings in connection with the ordering of said election and the subsequent conducting thereof be declared by this Honorable Board to be void and of no effect.

Dated at Los Angeles, California this 23rd day of May, 1941.

BINFORD & BINFORD
By L. B. BINFORD
Attorneys for Stockholders
Publishing Company, Inc.

[Title of Board and Causes.]

Case No. XXI-R-928

OBJECTIONS TO THE CONDUCT OF THE BALLOT AND TO THE ELECTION REPORT

Comes now the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated (hereinafter sometimes called the Objector), appearing for itself alone, and without waiving its right to object to the jurisdiction of the above entitled Board and without consenting to the jurisdiction of the above entitled Board, and

appearing solely for the purpose of filing, pursuant to Section 203.9 of the Rules and Regulations of the National Labor Relations Board, Series 2, these Objections to the conduct of the ballot and the Election Report, objects to the conduct of that certain secret ballot, conducted at the Pacific Electric Theater, 627 South Los Angeles Street, Los Angeles, California, May 14, 1941, between the hours of ten o'clock A.M. and ten o'clock P.M., and to the Election Report of said secret ballot, dated May 17, 1941, and served upon Objector May 19, 1941, upon the following and each of the following grounds:

(1) That the National Labor Relations Board has no jurisdiction over Objector.

(2) That Objector is not engaged in commerce among the several states or between the District of Columbia or any territory of the United States, or any other state or territory, or between any foreign country or any state, territory or the District of Columbia or within the District of Columbia or any territory or between points in the same state or territory, or any other state or territory or the District of Columbia, or any foreign country, and therefore the National Labor Relations Board has no jurisdiction over respondent.

(3) That the Objector is not engaged in interstate or foreign commerce, and its activities do not affect interstate or foreign commerce in that only 32/100ths of one percent of the product manufactured or produced by Objector is sold or distributed outside of the State of California, and that the

attempted application of the National Labor Relations Act to the business of the Objector is invalid and void under the Tenth Amendment to the Constitution of the United States and is in excess of the powers granted the Congress by Section 8 of Article I of the Constitution of the United States.

(4) That no one of the persons voting in said election held at Pacific Electric Theater, 627 South Los Angeles Street, Los Angeles, California, May 14, 1941, is an employee of this Objector, and hence the National Labor Relations Board had no jurisdiction to order said election or to conduct the same.

(5) That each of the persons voting in said election was and is an independent merchant selling newspapers, and in the conduct of his news vending activities is an independent merchant and is not an employee of the Objector, and the National Labor Relations Board had no jurisdiction to authorize or conduct an election among or for independent merchandisers and vendees of merchandise purchased from the vendor thereof, to-wit, Objector.

(6) That each of the persons voting in said election is and was in the conduct of his news vending activities engaged solely in intrastate commerce, and therefore the National Labor Relations Board has no jurisdiction over their activities and had no jurisdiction to authorize, order or conduct an election among such persons, and the same was and is wholly invalid and void.

(7) That no one of the persons voting in said election is or was in the conduct of his news vend-

ing activities engaged in interstate commerce or in any business activity having a close, intimate, substantial or any relation to trade, traffic or commerce among the several states or the territory of the United States and foreign countries, and therefore the National Labor Relations Board has no jurisdiction over the Objector or over the persons balloting in said election, and had no jurisdiction to authorize, order or conduct said election.

(8) That no cessation of the news vending activities of the persons balloting in said election, or any of them, can or will burden or obstruct commerce or the free flow of commerce, and therefore the National Labor Relations Board has no jurisdiction over Objector or over its relations with said independent news vendors, and had no jurisdiction to authorize, order or conduct said election.

(9) That no cessation of the news vending activities of the persons balloting in said election, or any of them, can or will lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and therefore the National Labor Relations Board has no jurisdiction over the Objector and has no jurisdiction over the relations existing between Objector and persons engaged in the independent business of vending Objector's products, and the order of the Board authorizing the holding of an election among such independent news vendors and the holding of said election under the auspices of the National Labor Relations Board and the rendition of a purported Report of said election was and is

wholly invalid and void and beyond the authority of the National Labor Relations Board.

(10) That the National Labor Relations Board has no jurisdiction over the relations of the Objector with the persons engaged in the independent business of vending the newspapers purchased by them from the Objector, the Publisher thereof, and therefore each and every action taken by the Board in the conduct of said election and in the rendition of a purported Election Report thereon was and is illegal and void and in excess of the powers of the National Labor Relations Board.

(11) That in the conduct of said election each and every one of the persons permitted to participate and ballot in said election were also permitted to participate and ballot in an election held at the same time and place among vendees of Stockholders Publishing Company, Inc., a corporation publishing the Daily News, erroneously and wrongfully claimed to be employees thereof. That each and all of said persons participating in the election among news vendors selling the Los Angeles Evening Herald and Express, published by Objector, were permitted to participate and ballot in said election upon the erroneous ground that they were employees of the Objector. That nevertheless each and all of said persons were also permitted to participate in the said election held at the same time and place among news vendors selling the Daily News, published by Stockholders Publishing Company, Inc. That each and all of said persons participating in the election among news vendors selling the Daily News, pub-

lished by Stockholders Publishing Company, Inc., were permitted to participate and ballot in said election upon the ground that they were employees of Stockholders Publishing Company, Inc. That each and all of the persons engaged in selling the Los Angeles Evening Herald and Express, published by Objector, also engage at the same time and at the same place in the selling of the Daily News, published by Stockholders Publishing Company, Inc. That in such vending activities such persons are subject to the control and direction of neither the Objector or Stockholders Publishing Company, Inc., and are the employees of neither the Objector or Stockholders Publishing Company, Inc. That that certain Election Report served on Objector on May 19, 1941, is invalid and void in that it purports to report on the result of an election held among alleged employees of the Objector, and all of said persons participating in said election were and are deemed to be by said National Labor Relations Board employees of Stockholders Publishing Company, Inc. That said persons can not be the employees of Objector and at the same time be employees of Stockholders Publishing Company, Inc.

(12) That the action of the National Labor Relations Board in ordering an election among the persons vending the Los Angeles Evening Herald and Express, purchased from and published by Objector, and the conducting of an election by said Board among said persons, and the rendering of a purported Election Report on the result of said

election among said persons, was and is a wholly illegal attempt by said Board to force upon Objector, as employees, a group of persons engaged in the independent business of vending newspapers and periodicals. That each one of said persons vends not only the Los Angeles Evening Herald and Express, published by and purchased from Objector, but for exactly the same number of hours per day and for the same number of days per week, and at the same spot or place of sale, vends also the Daily News, published by and purchased from Stockholders Publishing Company, Inc., and most of said persons, for exactly the same number of hours per day and for the same number of days per week, and at the same spot or place of sale, vend also the Saturday Evening Post, published by Curtis Publishing Company; the Liberty Magazine, published by Macfadden Publications, Incorporated; the Collier's Magazine, published by Crowell Publishing Company; the Time Magazine, published by Time, Inc.; the Life Magazine, published by Time, Inc.; and other magazines and periodicals and the Los Angeles Examiner, published by and purchased from the Los Angeles Examiner Department of Hearst Publications, Incorporated; and the Los Angeles Times, published by and purchased from the Times-Mirror Company. That the National Labor Relations Board may not legally impose upon the Objector the obligations, duties and responsibilities of an employer in respect of persons performing on behalf of many other corporations exactly the same

news vending activities which they perform on behalf of the Objector.

(13) That said election and the purported Election Report rendered thereon was and is wholly invalid and void in that the persons participating in said election were permitted to participate therein upon the wrongful and erroneous ground that they were employees of the Objector and were also permitted to participate in an election held at the same time and place among alleged employees of the Stockholders Publishing Company, Inc. That said persons should have been compelled to elect as to which election each would participate in, and that the failure of the Board to compel each person to so elect, rendered the purported election wholly illegal and void, in that said persons can not render services as employees of the Objector and during the same hours and at the same place render services as employees of Stockholders Publishing Company, Inc.

(14) That each of the ballots cast in the election among the purported employees of the Objector was and is wholly invalid in that each of the persons casting said ballots at the time of said election and prior thereto claimed to be an employee of Stockholders Publishing Company, Inc., and was and is not an employee of the Objector.

(15) That the National Labor Relations Board has no jurisdiction over Objector in that the National Labor Relations Act imposes jurisdiction in said Board only over persons occupying the relationship of employer and employee. That the rela-

tionship existing between the persons participating and balloting in said election and Objector is a vendor-vendee relationship between a manufacturer of goods, to-wit, the Objector and persons buying such goods at wholesale for retail sale to the members of the general public. That the ordering of said election, the conducting thereof by the Board and the rendering of a purported Election Report thereon is in pursuance of an unlawful and illegal attempt by the Board to force the Objectors to adopt a specific method of distribution of its product to the public, i.e., to force the Objectors to distribute the same through employees rather than through independent merchandisers or news vendors as is now and has for many years in the past been the usual and customary method of distributing newspapers. That the ordering of said election, the conducting thereof by the Board and the rendering of a purported Election Report thereon is in pursuance of an illegal and unlawful attempt by the Board to impose the wishes and desires of the Board upon the Objector against its judgment and in defiance of its legal rights, in a matter relating solely to business practices and procedure. That such attempted arrogation of authority by the Board is wholly illegal and unlawful, and beyond the jurisdiction of the Board and in defiance of the pronouncement of the Supreme Court of the United States in the case of The Associated Press v. National Labor Relations Board, 301 U.S. 103, 132, 81 L. Ed. 953, 960, that "The Act (National Labor Relations Act) does not compel the

petitioner (The Associated Press) to employ anyone."

That such attempted arrogation of power by the Board abridges the freedom of the Press guaranteed Objector by the First Amendment to the Constitution of the United States of America and seeks to and tends to and does unlawfully and illegally restrain, coerce, and regulate the free dissemination of news to the public by the Objector, and to abridge the freedom of speech and the freedom of the Press guaranteed to Objector by said First Amendment to the Constitution of the United States.

Wherefore, the Objector prays that said "Election Report," rendered herein, be rejected and ordered stricken from the records and files of this proceeding by this Honorable Board, and that said purported secret ballot conducted at Pacific Electric Theater, 627 South Los Angeles Street, Los Angeles, California, on May 14, 1941, between the hours of ten o'clock A.M. and ten o'clock P.M., be declared null and void and of no force or effect.

Dated at Los Angeles, California, this 23rd day of May, 1941.

FLINT & MacKAY,
By EDWARD L. COMPTON,
Attorneys for the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated.

[Title of Board and Causes.]

Case No. R-1926

ORDER OVERRULING "OBJECTIONS TO VALIDITY OF DIRECTION OF ELECTIONS AND EXCEPTIONS TO THE SAME: BLANKET OBJECTION TO THE BALLOT OF EACH AND EVERY PERSON PARTICIPATING IN SAID ELECTIONS (LOS ANGELES EXAMINER UNIT)"

The Board, on January 9, 1941, having issued a Decision and Direction of Elections in the above-entitled cases and, thereafter, having issued amendments to the said Decision and Direction of Elections; and, thereafter, on May 15, 1941, Attorneys for Hearst Publications, Incorporated (Los Angeles Examiner Department), having filed "Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Los Angeles Examiner Unit)"; and the Board having duly considered the matter,

It is Hereby Ordered that the said "Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Los Angeles Examiner Unit)" be, and they hereby are, overruled.

Dated, Washington, D. C., May 26, 1941.

By direction of the Board:

[Seal] BEATRICE M. STERN,
Executive Secretary.

[Title of Board and Causes.]

Case No. R-1923

REPORT ON OBJECTIONS

The undersigned has received the Objections to the Election Report, dated May 17, 1941, and signed by the Respondent, Stockholders Publishing Company, Inc.

The undersigned has considered the same and finds that the said Objections raised no material issue with respect to the conduct of the ballot, but that the Objections concern matters which were of record before the Board, which the Board duly considered in issuing its Direction of Election.

Dated at Los Angeles, California, May 26, 1941.

/s/ GEORGE A. YAGER,
Acting Director,
[Seal] National Labor Relations Board,
Twenty-first Region,
808 U.S. Postoffice & Courthouse,
Los Angeles, California.

[Title of Board and Causes.]

Case No. R-1924

REPORT ON OBJECTIONS

The undersigned has received the Objections to the Election Report, dated May 17, 1941, and signed by the Respondent, Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department).

The undersigned has considered the same and

finds that the said Objections raised no material issue with respect to the conduct of the ballot, but that the Objections concern matters which were of record before the Board, which the Board duly considered in issuing its Direction of Election.

Dated at Los Angeles, California, May 26, 1941.

GEORGE A. YAGER,
Acting Director,
National Labor Relations Board,
Twenty-first Region,
808 U.S. Postoffice & Courthouse,
Los Angeles, California.

[Title of Board and Causes.]

Case No. R-1925

ELECTION REPORT

Pursuant to the Rules and Regulations of the National Labor Relations Board—Series 2, as amended, Article III, Section 9, the undersigned hereby makes the following Election Report:

On January 9, 1941, and in amendments to its Direction of Election thereafter issued, the National Labor Relations Board directed that an election by secret ballot be conducted among all news boys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, on or before January 9, 1941, the date of the Direction of Election, including em-

ployees who did not work on said date because they were ill or on vacation and employees who were then or since temporarily laid off, and excluding temporary news boys and employees who quit or were discharged for cause after the date of the Order, to determine whether they desire to be represented for purposes of collective bargaining by Los Angeles News Boys Local Industrial Union No. 75, affiliated with the Congress of Industrial Organizations.

Pursuant to said Direction of Election, the undersigned conducted said secret ballot at Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, on May 15, 1941, between the hours of 9 a.m. and 5 p.m.

The ballots used in the conduct of said secret ballot were in the form attached to this Report as Appendix I and made a part hereof. Said secret ballot was conducted in a manner conforming to the directions for the conduct of said secret ballot heretofore issued by the National Labor Relations Board, and full opportunity was accorded to all parties to this investigation to participate therein and to make challenges.

On May 9, 1941, the Times Mirror Company filed "In The Matter of the Times Mirror Company and Los Angeles News Boys Local Industrial Union No. 75, C.I.O., Case No. XXI-R-1062, consolidated with XXI-R-927, XXI-R-928 and XXI-R-1084. Objection to Validity of Direction of Elections and Objections to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in

Said Elections (Times Unit)." The above-entitled instrument contains a general challenge to all voters on the general grounds the National Labor Relations Board does not have jurisdiction over Respondent and that the individuals referred to as voters are not employees of Respondent.

Examination of this Objection indicates the grounds for their objection are based upon facts which had been considered by the Board in its Direction of Election. The matters once having been before the Board and determined by it, the undersigned hereby overrules the objections contained in the aforementioned instrument.

The undersigned hereby certifies that said secret ballot was fairly and impartially conducted and that the ballots cast were duly and fairly counted under his supervision, and that statements to such effect from the tellers have been filed with the undersigned.

Your attention is called to Article III, Section 9, of Rules and Regulations—Series 2, as amended, issued by the National Labor Relations Board, which provides that within five (5) days after the serving of the Election Report, the parties to the proceeding may file with the Regional Director any objections to the ballot or the Election Report.

Unless objections to this Report are filed within five (5) days after the receipt thereof, the Regional Director will destroy all marked ballots in this election.

The undersigned hereby makes his findings with respect to the results of said secret ballot:

Total on Eligibility List.....457
Total Ballots Cast 309
Total Ballots Challenged 108
Total Blank Ballots 2
Total Void Ballots 2
Total Ballots Not Counted 112
Total Votes Counted 197
Total Votes for Los Angeles News Boys Local Industrial Union No. 75, C.I.O. 131
Total Votes against Los Angeles News Boys Local Industrial Union No. 75, C.I.O. 66

Dated: June 2, 1941

/s/ WILLIAM R. WALSH,
Regional Director,
National Labor Relations Board,
808 U. S. Postoffice & Courthouse,
Los Angeles, California.

[Title of Board and Causes.]

Case No. R-1925

OBJECTIONS TO THE CONDUCT OF THE BALLOT AND TO THE ELECTION REPORT

Comes now The Times Mirror Co., a corporation (hereafter called "Times"), and severing itself from all other persons, and appearing specially and without waiving all objections heretofore made to the jurisdiction of the National Labor Relations Board (hereafter called "Board"), and for the

sole purpose of filing (pursuant to Article III, Section 9 of Rules and Regulations—Series 2, as Amended—issued by the Board) its objections to the conduct of the ballot and the Election Report, and hereby objects to the conduct of that certain secret ballot conducted at Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, on May 15, 1941, between the hours of 9:00 o'clock A. M. and 5:00 o'clock P. M., and to the Election Report issued herein under date of June 2, 1941, and served upon the Times on June 3, 1941. Said objections are based upon each and all of the following grounds:

2. The appropriate unit as determined by the Board (namely, newsboys in Los Angeles and Glendale) is not and was not in fact an appropriate unit, in that newsboys with interests similar to those of newsboys within the city limits of Los Angeles and Glendale were excluded from the unit for the reason, as stated by the Board in its Decision dated January 9, 1941, that

> "union organization has not at present extended to suburban newsboys other than the Times newsboys in Glendale, California."

The record herein discloses that newsboys selling in other nearby areas such as Beverly Hills, Burbank, Belvedere, South Pasadena, Westwood, Huntington Park and other unincorporated territory are similarly situated to newsboys selling in Los Angeles and Glendale with respect to methods of sale, price paid for papers, methods of distribution of papers to said newsboys, and hours engaged in

sales of papers. A map correctly depicting the geographical proximity of said nearby areas to the City of Los Angeles is attached hereto, marked Exhibit "B" and incorporated herein. The arbitrary selection of these two groups (Los Angeles and Glendale) as the appropriate unit is violative of the National Labor Relations Act and contrary to the decision of the Supreme Court of the United States as declared in Pittsburgh Plate Glass Co. v. NLRB, 61 S. Ct. 908.

5. A majority of the newsboys in an appropriate unit (i.e., all newsboys engaged in the street sale of the Times at established spots four or more hours a day, five or more days a week, within Los Angeles, Glendale, Beverly Hills, Burbank, Belvedere, South Pasadena, Westwood, Huntington Park, and other nearby unincorporated territory, State of California, except temporary newsboys) did not vote at said election.

7. The relationship between the Times and the newsboys declared by the Board eligible to vote in said election is not subject to the jurisdiction of the Board.

8. Each of the said newsboys is and was an independent contractor and none of said newsboys is or was an employee of the Times, and there is no evidence in the record in this proceeding to sustain the Board's finding that said newsboys are or were employees of the Times.

9. No question affecting commerce has arisen, or can arise, concerning the representation of said newsboys in their relationship with the Times.

10. The Board has no jurisdiction over the Times or the business conducted by it.

11. The relations of the Times with said newsboys are not subject to the jurisdiction of the Board.

12. No claimed labor dispute between the Times and said newsboys can affect commerce within the meaning of the National Labor Relations Act.

The foregoing grounds of objection are cumulative; no one is exclusive of any other.

Wherefore, The Times Mirror Co. prays that said Election Report be rejected, that said purported secret ballot be declared null and void, and that the petition herein for certification be dismissed.

COSGROVE & O'NEIL,
T. B. COSGROVE,
F. B. YOAKUM, Jr.,
By F. B. YOAKUM, Jr.,
Attorneys for The Times Mirror Co.

[Title of Board and Causes.]

Case No. R-1925

REPORT ON OBJECTIONS

This matter comes on before the Regional Director on the Objections to the Conduct of the Ballot and to the Election Report of The Times-Mirror Co. The said Objections of The Times-Mirror Co. cover certain matters relating to the conduct of

the ballot held on May 15, 1941, among employees of The Times-Mirror Co.

The undersigned has investigated the matters raised by the Objections to the Conduct of the Ballot and to the Election Report and hereinafter sets forth his findings in connection therewith.

The undersigned has investigated the allegations raised in paragraphs number 2, 5, 7, 8, 9, 10, 11, and 12, and finds these allegations are based upon facts which have been considered by the Board in its Direction of Election. The matters once having been before the Board and determined by it, the undersigned hereby overrules the objections in the paragraphs specified.

Dated: June 12, 1941.

(Signed) WILLIAM R. WALSH,
Director,
National Labor Relations Board,
[Seal] Twenty-first Region.

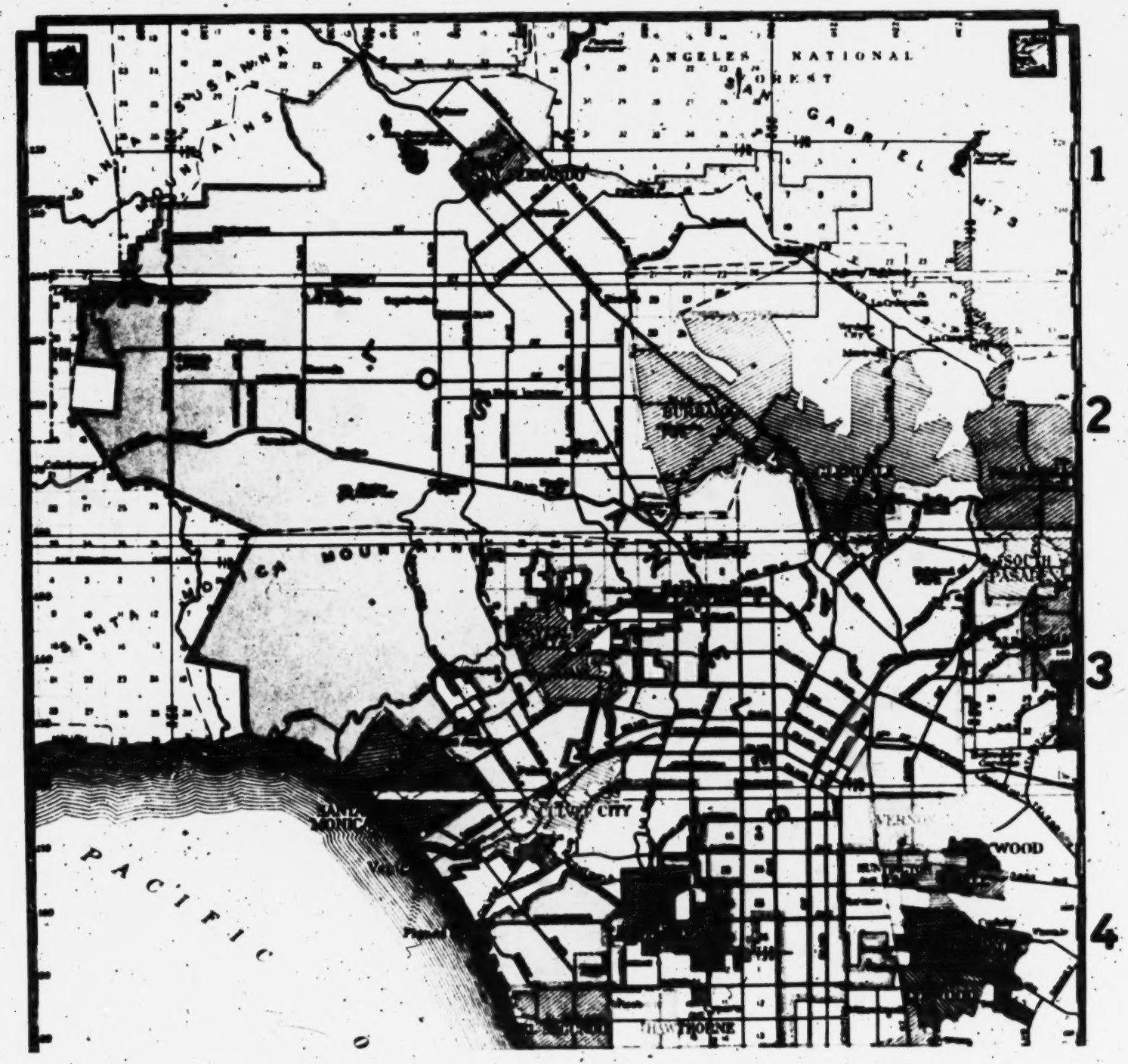
[Title of Board and Causes.]

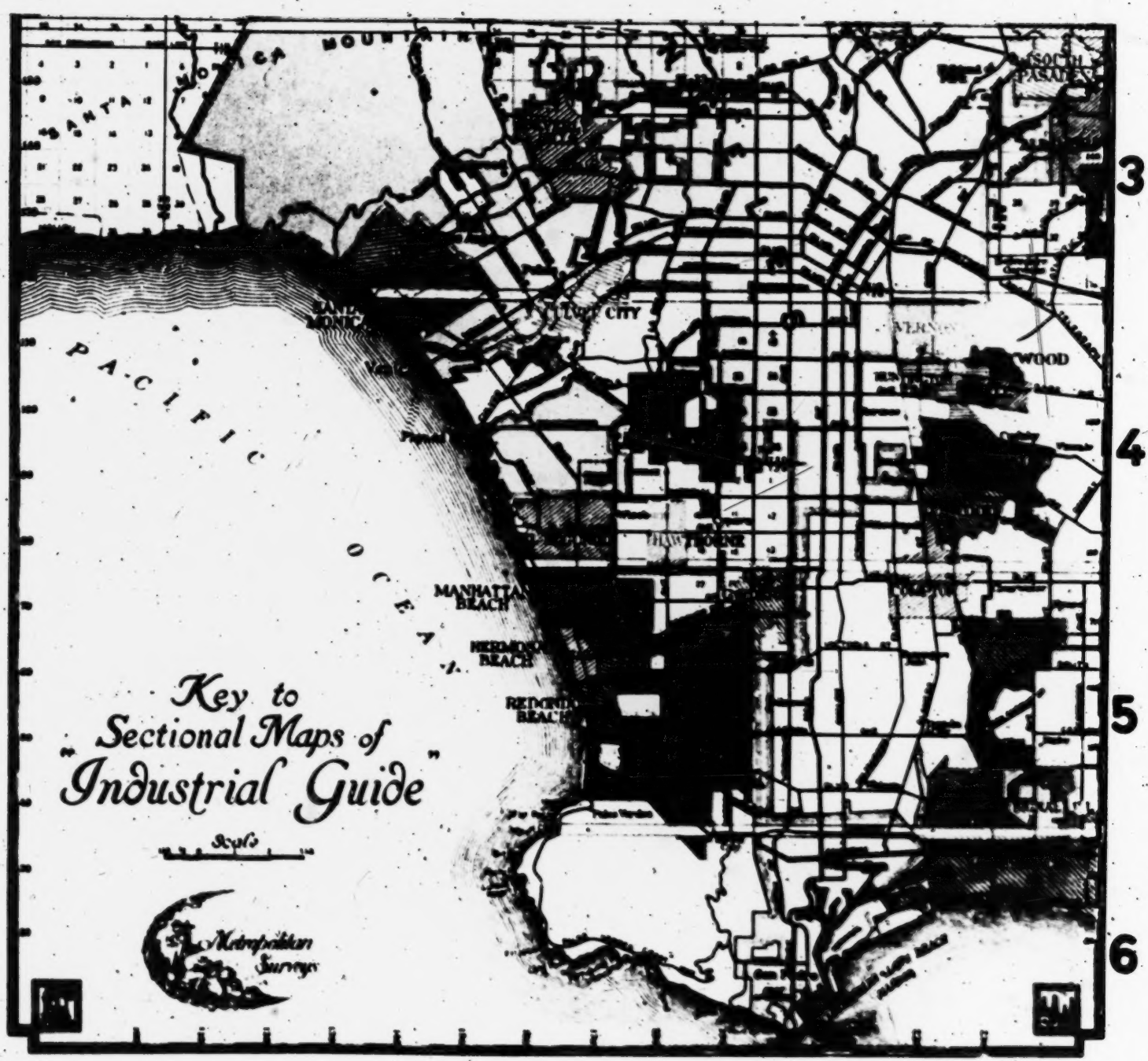
Cases Nos. R-1923-1924-1925

SUPPLEMENTAL DECISION
and
CERTIFICATION OF REPRESENTATIVES

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Elections[1] in the above-

[1] 28 N. L. R. B., No. 151.


ANGELES NATIONAL
FOREST
SAN GABRIEL MTS
SANTA MONICA MOUNTAINS
BURBANK
SOUTH PASADENA
CULVER CITY
SANTA MONICA
VENICE
PACIFIC OCEAN
WOOD
HAWTHORNE
1
2
3
4


3
4
5
6
PACIFIC
OCEAN
MANHATTAN BEACH
HERMOSA BEACH
REDONDO BEACH
Key to
Sectional Maps of
"Industrial Guide"
Metropolitan Surveys

entitled proceedings.[2] Pursuant to the Direction of Elections and various amendments thereto[3] separate elections by secret ballot were conducted under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California) on May 14, 1941, among employees of the News and of the Herald, and on May 15, 1941, among employees of the Times.[4]

---

[2]On March 14, 1941, Stockholders Publishing Company, Inc., Los Angeles, California, herein called the News, and Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), Los Angeles, California, herein called the Herald, filed their respective motions to reopen the proceedings and to modify the Decision. By order dated March 21, 1941, the Board denied the said motion of the News. The motion of the Herald is hereby denied.

On May 14, 1941, the Times-Mirror Company, Los Angeles, California, herein called the Times, filed "Objections to Validity of Direction of Elections and Exceptions to Same; Blanket Objection to the Ballot of Each and Every Person Voting in Said Elections (Times Unit)," which the Board by order dated May 21, 1941, overruled. On May 14, 1941, the News and the Herald, by documents filed with the Regional Director, separately "challenged" all votes which might be cast in the elections among their respective employees. The Regional Director considered the documents as objections to the election and in his Election Reports referred to below, overruled such objections. The rulings are hereby affirmed.

[3]29 N. L. R. B., No. 16; 29 N. L. R. B. No. 16a; 30 N. L. R. B., No. 110; 30 N. L. R. B., No. 110a; 31 N. L. R. B., No. 115.

[4]Pursuant to the said Decision and Direction of Elections an election was also conducted on May

The News Election

On May 17, 1941, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—series 2, as amended, issued and duly served upon the parties his Election Report relating to the election among the employees of the News. As to the balloting and its results the Regional Director reported as follows:

Total on eligibility list	349
Total ballots cast	247
Total ballots challenged	36
Total blank ballots	1
Total void ballots	1
Total ballots not counted	38
Total ballots counted	209
Total votes for Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.[5]	191
Total votes against Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.	18

15, 1941, among employees of Hearst Publications, Incorporated (Los Angeles Examiner Department), Los Angeles, California. Since the Regional Director has not completed his investigation and has not issued his Election Report with respect to that election, no action is taken in this Supplemental Decision and Certification of Representatives with respect thereto.

---

[5] Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is herein called the Union.

On May 24, 1941, the News filed with the Regional Director Objections to the Election Report and to the conduct of the ballot. On May 26, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued his Report on Objections. The Board has considered the Objections and the Regional Director's Report on Objections and finds that the Objections raise no substantial or material issues with respect to the conduct of the election. The Objections are hereby overruled. Since the challenged ballots cannot affect the result of the election, it is unnecessary to pass upon the challenges.

The Herald Election

On May 17, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued and duly served upon the parties his Election Report relating to the election among the employees of the Herald. As to the balloting and its results the Regional Director reported as follows:

Total on eligibility list	209
Total ballots cast	179
Total ballots challenged	29
Total blank ballots	1
Total void ballots	0
Total ballots not counted	30
Total ballots counted	149
Total votes for Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.	138

Total votes against Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. 11

On May 23, 1941, the Herald filed Objections to the Conduct of the Ballot and to the Election Report. On May 26, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued his Report on Objections. The Board has considered the Objections and the Regional Director's Report on Objections, and finds that the Objections raise no substantial or material issue with respect to the conduct of the election. The Objections are hereby overruled. Since the challenged ballots cannot affect the result of the election, it is unnecessary to pass upon the challenges.

The Times Election

On June 2, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued and duly served upon the parties his Election Report relating to the election among the employees of the Times. As to the balloting and its results the Regional Director reported as follows:

Total on eligibility list 457
Total ballots cast 309
Total ballots challenged 108
Total blank ballots 2
Total void ballots 2
Total ballots not counted 112
Total ballots counted 197

Total votes for Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. 131

Total votes against Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. 66

In his said Election Report the Regional Director sustained 51 of the challenges and overruled the remaining 57.

On June 6, 1941, the Times filed with the Regional Director Objections to the Conduct of the Ballot and to the Election Report. The Union filed no objections to the Election Report. On June 12, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued his Report on Objections.

In its Objections the Times stated; among other things, that the notice of election circulated by the Acting Regional Director was misleading and not in conformity with the Board's Direction of Elections, in that the Direction of Elections directed that an election be held among certain newsboys engaged in the sale of "The Los Angeles Times," a newspaper published by the Times,[6] within Los Angeles and Glendale, California, whereas the notice of election announced that the election would be held among all such newsboys within Los Angeles, California. Glendale is a suburb adjacent to Los Angeles. In his Report on Objections the Re-

[6] "The Los Angeles Times" was referred to in the Decision and Direction of Elections and in the said Objections as the Times.

gional Director reported the following: that mention of Glendale was omitted from the notice of election through a clerical error; that there are approximately 16 known vendors of "The Los Angeles Times" in Glendale, each of whom was registered by an agent of the Board accompanied by a representative of the Times, and each of whom, as he was registered, received an identification card;[7] that a notice of election was sent by first class mail to each newsboy registered, at his home address; and that 8 of the approximately 16 eligible newsboys in Glendale cast ballots in the election. The Regional Director found that the notice of election was sufficient and that the objection in

---

[7]The identification card was in the following form:

No.....

United States of America
National Labor Relations Board
808 U. S. Postoffice Bldg., Los Angeles
Voter's Identification Card

Newsboys: Bring this card with you when you vote.

Newsboys may appear on election day even if they have not received or have lost their identification card. Dates and place of election will be announced later.

Do Not Sign This Card

.....

.....

Date.....1941 No.....

(Footnote continued next page.)

question raised no substantial or material issue with respect to the conduct of the ballot. We agree with this finding.

No objections were filed to the Regional Director's ruling mentioned above sustaining challenges to 51 ballots.[8] The Times objected to the Regional Director's action in overruling its challenges to 32 ballots,[9] and the Regional Director found, on the basis of his investigation of the facts, that this objection raised no substantial or material issue with respect to the conduct of the election. Since all the challenged ballots which the Regional Director ruled valid, including both those challenged

---

United States of America
National Labor Relations Board

Name .....
Address .....
Location .....
Times ☐; News ☐; Examiner ☐; Herald Express ☐
Employed on or prior to Jan. 9, 1941.....
Yes ☐ No ☐
Employed for.....months.

.....
Newsboy's Signature

.....
Board Agent

---

[8]Of the sustained challenges, 50 were interposed by the Times and 1 by the Union.

[9]The remaining overruled challenges, numbering 25, were interposed by the Union.

by the Times and those challenged by the Union, could not affect the outcome of the election, it is unnecessary to pass upon the challenges. We therefore find that this objection raises no substantial or material issue with respect to the conduct of the ballot.

The Times interposed various general objections to the Election Report, none of which, however, raise any substantial or material issue with respect to the conduct of the ballot.

We hereby overrule in their entirely the Times' Objections to the Conduct of the Ballot and to the Election Report.

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9(c) of the National Labor Relations Act, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended,

It is Hereby Certified that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of Stockholders Publishing Company, Inc., Los Angeles, California, who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, as their representative for the purpose of collective bargaining and that, pursuant to the provisions of Section 9(a) of the Act, Los Angeles

Newsboys Local Industrial Union No. 75, C. I. O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment;

It is Hereby Certified that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of Hearst Publications, Incorporated, (Los Angeles Evening Herald & Express Department) Los Angeles, California, who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9(a) of the Act, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment;

It is Hereby Certified that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of The Times-Mirror Company, Los Angeles, California, who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, excluding temporary newsboys, as their representative for the purpose of collective bargaining, and that, pur-

suant to the provisions of Section 9(a) of the Act, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Washington, D. C., this 30th day of Jul 1941.

HARRY A. MILLIS, Chairman
EDWIN S. SMITH, Member
WM. M. LEISERSON, Member
[Seal] NATIONAL LABOR RELATIONS BOARD

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Vernon S. Green, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 30th day of July, 1941, I mailed postpaid, bearing government frank, by registered mail, a copy of the Supplemental Decision and Certification of Representatives to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union, No. 75, C.I.O.,
Att: Messrs. Pat Comorre, Gene L. Alley and Roy Eley,
Room 304, 212 W. 3rd Street,
Los Angeles, Calif.

Gallagher, Wirin & Johnson,
257 South Spring St.,
Los Angeles, Calif.

Stockholders Publishing Company,
12th & Los Angeles Sts.,
Los Angeles, Calif.

Messrs. L. B. Binford and Howard M. Binford,
606 S. Hill St.,
Los Angeles, Calif.

Hearst Publication, Incorporated, (Los Angeles Evening Herald & Express Department),
1243 Trenton Street,
Los Angeles, Calif.

Flint and McKay,
Att: Messrs. Edward L. Compton and Donald W. Hamblin,
458 S. Spring Street,
Los Angeles, Calif.

Hearst Publications (Los Angeles Examiner Department),
410 Hearst Building,
San Francisco, Calif.

Lawler, Felix and Hall,
Att: Messrs. John M. Hall, Marcus Matson and A. L. Mitchell,
605 W. Tenth Street,
Los Angeles, Calif.

Times Mirror Co.,
2nd & Spring Streets,
Los Angeles, Calif.

Cosgrove & O'Neil,
Att: Messrs. T. B. Cosgrove and F. B. Yakim, Jr.,
458 S. Spring Street,
Los Angeles, Calif.

/s/ VERNON S. GREEN.

Subscribed and sworn to before me this 30th day of July, 1941.

[Seal] IRVING HELBLING.

My commission expires Sept. 2, 1945.

[Title of Board and Causes.]

Case No. R-1926

ELECTION REPORT

Pursuant to the Rules and Regulations of the National Labor Relations Board—Series 2, as amended, Article III, Section 9, the undersigned hereby makes the following Election Report:

On January 9, 1941, and in amendments to its Direction of Election thereafter issued, the National Labor Relations Board directed that an election by secret ballot be conducted among all news boys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, on or before January 9, 1941, the date of the Direction of Election, including employees who did not work on said date because they were ill or on vacation and employees who were then or since temporarily laid off, and excluding temporary news boys and employees who quit or were discharged for cause after

desire to be represented for purposes of collective bargaining by Los Angeles News Boys Local Industrial Union No. 75, affiliated with the Congress of Industrial Organizations.

Pursuant to said Direction of Election, the undersigned conducted said secret ballot at Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, on May 15, 1941, between the hours of 9 a.m. and 5 p.m.

The ballots used in the conduct of said secret ballot were in the form attached to this Report as Appendix I and made a part hereof. Said secret ballot was conducted in a manner conforming to the directions for the conduct of said secret ballot heretofore issued by the National Labor Relations Board, and full opportunity was accorded to all parties to this investigation to participate therein and to make challenges.

The ballots of 152 voters were challenged, 33 by the Union and 119 by the Company. In this Report the Regional Director has found that none of the challenges by the Union have merit and that all of the votes should be counted. In this Report the Regional Director has found 59 of the challenges made by the Company have merit and the votes should not be counted, and 60 of the challenges do not have merit and the votes should be counted.

In Appendix II are the names of 32 voters challenged by the Union on the ground the voter is not in the unit defined by the Board. The Union now states that upon receipt of the eligibility list prior to the election, it checked the locations and did not

find present voters named on the eligibility list. Challenges were made on that ground. With regard to the 32 challenges of the Union, the Regional Director has considered the challenges, has reviewed the affidavits of the men so challenged, and through his agents has conducted a survey among certain of these voters at the locations set out on the registration list; and from these sources has secured competent information to support his action, and the Regional Director now finds the challenges are without merit and that these ballots should be counted.

At the election the Union challenged the vote of a person whose name appears in Appendix III on the ground he was not within the Board's Order because of temporary supervisory duties. The Regional Director has considered the challenges and finds the challenge without merit and that this ballot should be counted.

At the election the Company challenged the vote of a person whose name appears in Appendix IV on the ground this person had been discharged prior to the election. The Regional Director has considered the challenge and finds the challenge has merit and the ballot should not be counted.

At the election the Company challenged the votes of two persons whose names appear in Appendix V on the ground the Company had ceased selling papers to them prior to January 9, 1941. The Regional Director has considered the challenges and finds they have merit and that the ballots should not be counted.

At the election the Company challenged the votes

of three persons whose names appear in Appendix VI on the ground that they were not qualified voters and were entirely unknown to the Company's representatives. The Regional Director has considered the challenges and finds they have merit and those ballots should not be counted.

At the election the Company challenged the votes of five persons whose names appear in Appendix VII on the grounds they were not qualified because they were not within the unit described in the Board's Order. The Regional Director has investigated the challenges and finds the voters did not make affidavits although afforded this opportunity, and there is nothing to refute the allegations of the Company and investigation fails to disclose the whereabouts of the voters. The Regional Director finds the challenges have merit and the votes should not be counted.

At the election the Company challenged the votes of four persons whose names appear in Appendix VIII on the broad ground they were not in the unit found by the Board to be appropriate. The Regional Director has investigated the challenges and finds the voters so challenged are within the unit found by the Board to be appropriate and that the challenges are without merit and the votes should be counted.

At the election the Company challenged the votes of 10 persons whose names appear in Appendix IX on the ground they were not eligible because of having quit their jobs before the date of election. The Regional Director has investigated the challenges

and finds they have merit and their votes should not be counted.

At the election the Company challenged the votes of five persons whose names appear in Appendix X on the grounds they were not eligible because of having quit their jobs before the date of the election. The Regional Director has investigated the challenges and finds they are without merit and the votes should be counted.

At the election the Company challenged the votes of 11 persons whose names appear in Appendix XI and subdivisions thereof on the ground they were not eligible for the reason they were not engaged in selling papers on or before January 9, 1941, the eligibility date set by the Board in its Order. The Regional Director has investigated the challenges of the votes cast by the persons whose names appear in Appendix XI A and finds they have merit and the votes should not be counted. The Regional Director has investigated the challenges against the votes of those persons named in Appendix XI B and finds the challenges have no merit and the votes should be counted. The voter whose name appears in Appendix XI C was challenged by the Company on the ground he was not eligible for the reason he was not engaged in selling papers on or before January 9, 1941. The question of eligibility having been raised by the Company, the Regional Director has investigated this challenge and finds the individual named in this Appendix secures his newspapers from a motor wholesaler who supplies markets, drug stores, news stands and news boys in a large territory in a

transaction between the motorman and the vendor, said transaction involving a sales activity which introduces elements making questionable the possibilities of full requirement with the Board's Order. The Regional Director has considered the challenge to this voter's ballot and finds the challenge is valid and the ballot should not be counted.

At the election the Company challenged the votes of 38 persons on the grounds they were selling less than 4 hours a day. The names of these voters appear in Appendix XII and subdivisions thereof. In Appendix XII A are the names of seven persons whose votes were challenged by the Company on the ground they were ineligible because they were not engaged in selling 4 or more hours a day. The Regional Director has investigated the challenges and finds they have merit and the votes should not be counted. The names of 24 persons appear in Appendix XII B. They were challenged by the Company on the ground they were not engaged in selling 4 or more hours a day. The Regional Director has investigated the challenges and finds them without merit and the votes should be counted. In Appendix XII C are the names of six voters challenged because they were not engaged in selling 4 hours a day. The question of eligibility of the voters having been raised, the Regional Director conducted an investigation and in his investigation found these persons secured their newspapers from motor wholesalers who supply markets, drug stores, news stands and news boys in a large territory in a transaction between the motorman and the vendor, said trans-

action involving a sales activity which introduces elements making questionable the possibilities of full requirement with the Board's Order. Sufficient question of eligibility has been raised by this factor. The Regional Director has considered the challenges to these voters and finds the challenges are valid and these ballots should not be counted. At the election the Company challenged the ballot of a voter whose name appears in Appendix XII D. The voter was challenged on the ground the voter was not engaged in selling 4 hours a day. A question of eligibility of the voter having been raised by the Company, the Regional Director conducted an investigation. The investigation reveals the sales location of the challenged voter is not within the district described in the Board's Order. The Regional Director finds the challenge is valid and the ballot should not be counted.

In Appendix XIII are the names of 22 voters challenged by the Company on the ground they secured their papers from sources other than the Examiner. The Regional Director has considered the challenges and has reviewed affidavits of the voters so challenged and finds these voters so challenged swore they are engaged in the sale of the Examiner within the meaning of the Board's Order and the Regional Director now finds the challenges are without merit and these ballots should be counted.

In Appendix XIV appears the name of a voter challenged on the ground he secured his papers from a source other than the Examiner and that he was not engaged in selling 4 or more hours a day. The

Regional Director has investigated the challenge and finds it has merit and the vote should not be counted.

At the election the Company challenged the votes of six persons classified as relief men, whose names appear in Appendix XV, on the ground they were not engaged in the selling of papers on or before January 9, 1941. The Regional Director has investigated these challenges and finds the Company has demonstrated accurate knowledge of the activities and whereabouts of its relief men. The Regional Director is willing to accept the statements of the Company with regards to the voters in Appendix XV and finds the challenges appear valid and the ballots should not be counted.

At the election the Company challenged the votes of three persons whose names appear in Appendix XVI on the ground they did not come within the unit found by the Board to be appropriate. The Regional Director has investigated the challenges and finds the information supplied by the voters in their sworn statements indicates the voters did not spend sufficient time in selling to come within the meaning of the Board's Order. The challenges have merit and the votes should not be counted.

At the election the Company challenged the votes of three persons whose names appear in Appendix XVII on the ground they were not engaged in selling within the official limits of the City of Los Angeles. The Regional Director has investigated the challenges and finds the challenges have merit and the votes should not be counted.

In Appendix XVIII are the names of five per-

sons who were challenged by the Company. These persons, for the convenience of this Report, are grouped in this Appendix. At the election the Company challenged the vote of Cass Westermeier on the ground he had quit after January 9, 1941, and before May 15, 1941. The Regional Director has investigated the challenge and finds it has merit and that the ballot should not be counted. At the election the Company challenged the vote of M. Cohen on the ground he had quit after January 9 and before May 15, 1941. The Regional Director has investigated the challenge and finds it has no merit and the vote should be counted. At the election the Company challenged the vote of Oscar B. Sharp on the ground he had quit after January 9 and prior to May 15, 1941. The Regional Director has investigated the challenge and finds it has no merit and the ballot should be counted. At the election the Company challenged the vote of W. J. Cartner on the ground he was not qaulified under the Board's Order. The Regional Director investigated on several occasions and found neither Cartner nor anyone at his supposed corner who knew him. The Regional Director finds the challenge has merit and the vote should not be counted. At the election the Company challenged the vote of G. Gleeson on the ground he had quit before May 15, 1941. The Regional Director has investigated the challenge and finds it has no merit and the vote should be counted.

On May 13, 1941, Hearst Publications, Inc. (Los Angeles Examiner Department) filed "In the Matter of Hearst Publications, Inc. (Los Angeles Ex-

aminer Department) and Los Angeles News Boys Local Industrial Union No. 75, C. I. O., Case No. XXI-R-1084, consolidated with XXI-R-927, XXI-R-928, and XXI-R-1062. Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in Said Election (Los Angeles Examiner Unit)." The above-entitled instrument contains a general challenge to all voters on the general grounds the National Labor Relations Board does not have jurisdiction over respondent and that the individuals referred to as voters are not employees of respondent. An examination of this objection indicates the grounds for the objection are based upon the facts which have been considered by the Board in its Direction of Election. The matters once having been before the Board and determined by it, the undersigned hereby overrules the objections contained in the aforementioned instrument.

The undersigned hereby certifies that said secret ballot was fairly and impartially conducted and that the ballots cast were duly and fairly counted under his supervision and that statements to such effect from the tellers have been filed with the undersigned.

Your attention is called to Article III, Section 9 of the Rules and Regulations—Series 2, as amended, issued by the National Labor Relations Board, which provides that within five (5) days after the serving of the Election Report, the parties to the proceeding may file with the Regional Director any objections to the ballot or the Election Report.

Unless objections to this Report are filed within five (5) days after the receipt thereof, the Regional Director will destroy all marked ballots in this election.

The undersigned hereby makes his findings with respect to the results of said secret ballot.

Total on elegibility list	453
Total ballots cast	320
Total ballots challenged	152
Total blank ballots	1
Total void ballots	2
Total ballots not counted	155
Total ballots counted	165
Total votes for Los Angeles News Boys Industrial Union No. 75, C. I. O.	100
Total votes against Los Angeles News Boys Industrial Union No. 75, C.I.O.	65

Dated this 29th day of August, 1941.

WILLIAM R. WALSH, Director
National Labor Relations Board, 21st Region, 808 U. S. Postoffice & Courthouse Building, Los Angeles, California.

[Title of Board and Causes.]

Case No. R-1926

OBJECTIONS TO THE CONDUCT OF THE BALLOT AND TO THE ELECTION REPORT.

Comes now Hearst Publications Incorporated, Los Angeles Examiner Department (hereinafter

sometimes called the "Objector"), appearing for itself alone and without waiving its right to object to the jurisdiction of the above-entitled Board and without consenting to the jurisdiction of the above entitled Board, and appearing solely for the purpose of filing, pursuant to Section 203.9 of the rules and regulations of the National Labor Relations Board, Series 2, these objections to the conduct of the ballot and to the Election Report, objects to the conduct of that certain ballot conducted at the Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, on May 15, 1941, and to the Election Report of said ballot dated August 29, 1941, and served upon this Objector September 2, 1941, upon each and all of the following grounds:

1. That the National Labor Relations Board has no jurisdiction over Objector.

2. That Objector is not engaged in commerce among the several states or between the District of Columbia or any territory of the United States, or any other state or territory, or between any foreign country or any state, territory or the District of Columbia or within the District of Columbia or any territory, or between points in the same state or territory, or any other state or territory or the District of Columbia, or any foreign country, and therefore the National Labor Relations Board has no jurisdiction over this Objector.

3. That the Objector is not engaged in interstate or foreign commerce and its activities do not affect interstate or foreign commerce and that the attempted application of the National Labor Rela-

tions Act to the business of Objector is invalid and void under the Tenth Amendment to the Constitution of the United States and is in excess of the powers granted to Congress by Section 8 of Article I of the Constitution of the United States.

4. That no one of the persons voting in the ballot or election held at Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, on May 15, 1941, is or has been an employee of Objector and the National Labor Relations Board had no jurisdiction to order said ballot or election or to conduct the same.

5. That each of the persons voting in said election was and is an independent merchant and in the conduct of any newspaper vending activities was and is an independent merchant and is not and has not been an employee of Objector and the National Labor Relations Board had no jurisdiction to authorize or conduct an election among or for independent merchandisers of merchandise purchased from Objector.

6. That each of the persons voting in said election is and was in the conduct of any newspaper selling activities engaged solely in intrastate commerce and the National Labor Relations Board has no jurisdiction over their activities and had no jurisdiction to authorize, order or conduct an election among such persons and the same was and is wholly invalid and void.

7. That no one of the persons voting in said ballot or election is or was in the conduct of his newspaper selling activities engaged in interstate

commerce or in any business activity having a close, intimate, substantial or any relation to trade traffic or commerce among the several states or the territory of the United States and foreign countries, and therefore the National Labor Relations Board has no jurisdiction over Objector or over the persons balloting in said election and had no jurisdiction to authorize, order or conduct said election.

8. That no cessation of the newspaper selling activities of the persons balloting in said election, or any of them, can or will burden or obstruct commerce or the free flow of commerce and the National Labor Relations Board has no jurisdiction over Objector or over any relations with the persons balloting in said election and has no jurisdiction to authorize, order or conduct said election.

9. That no cessation of the news vending activities of the persons balloting in said election, or any of them, can or will lead, or tend to lead, to a labor dispute burdening or obstructing commerce or the free flow of commerce and the National Labor Relations Board has no jurisdiction over Objector and has no jurisdiction over any relations existing between Objector and the persons so balloting in said election, and the order of the Board authorizing the holding of an election among such persons and the holding of said election or the rendition of a purported report of said election was and is wholly invalid and beyond the authority of the National Labor Relations Board.

10. That the National Labor Relations Board has no jurisdiction over the relations of Objector with persons engaged in the independent business of selling newspapers purchased by them from Objector, the publisher thereof, and each and every action taken by the Board in the conduct of said election and in the rendition of a purported election report thereon was and is illegal and void and in excess of the powers of the National Labor Relations Board.

11. That in the conduct of said election and ballot a substantial number of the persons permitted to participate and ballot in said election were also permitted to participate and ballot in an election held at the same time and place among persons selling or claimed to be selling the Los Angeles Times, a publication of the Times-Mirror Co., a corporation; that each and all of the persons participating in the election among news vendors selling the Los Angeles Examiner, published by Objector, were permitted to so participate and ballot upon the erroneous claim that they were employees of Objector. That nevertheless a substantial portion of said persons were also permitted to participate in said election held at the same time and place among news vendors selling the Los Angeles Times, published by Times-Mirror Co. That said persons were permitted to participate and ballot in said election upon the claim that they were employees of Times-Mirror Co. That a substantial number of the persons engaged in selling the Los Angeles Examiner, published by Objector,

also engaged at the same time and at the same place in the selling of said Los Angeles Times. That said Los Angeles Times and said Times-Mirror Co. are and at all times concerned herein have been competitors of Objector. That in such vending activities such persons are subject to the control and direction of neither Objector or of said Times-Mirror Co. and are not employees of either Objector or Times-Mirror Co. That said election report served on Objector on September 2, 1941, is invalid and void, in that it purports to report on the result of an election held among alleged employees of Objector and a substantial number of said persons were at the same time claimed by the National Labor Relations Board to be employees of Times-Mirror Co. That said persons cannot be the employees of Objector and at the same time be employees of Times-Mirror Co.

12. That the action of the National Labor Relations Board in ordering said election and ballot and in conducting said election and ballot and the rendering of a purported election report thereon was and is a wholly illegal attempt by said Board to force upon Objector, as employees, a group of persons engaged in the independent business of vending newspapers and periodicals. That a substantial number of said persons sell not only the Los Angeles Examiner, published by Objector, but at the same time and at the same place also sell the Los Angeles Times, a newspaper published for sale in competition with said Los Angeles Examiner. That some of the persons balloting at said

election also sell the Saturday Evening Post, published by the Curtis Publishing Company; the Liberty Magazine, published by Macfadden Publications, Incorporated; the Collier's Magazine, published by Crowell Publishing Company; the Time Magazine, published by Time, Inc.; the Life Magazine, published by Time, Inc., and other magazines, periodicals and newspapers. That said persons carry on their activities of selling said magazines, periodicals and newspapers at the same time and place that they sell said Los Angeles Examiner. That the National Labor Relations Board may not legally impose upon Objector the obligations, duties and responsibilities of an employer in respect of persons performing on behalf of many other corporations the same news vending activities which they perform in connection with the newspaper published by Objector.

13. That said election and ballot and the purported election report rendered thereon was and is wholly invalid and void, in that the persons participating in said election were permitted to participate therein upon the wrongful and erroneous ground that they were employees of Objector and were also permitted to participate in an election held at the same time and place among alleged employees of Times-Mirror Co. That none of said persons should have been permitted to participate in an election as purported employees of two corporations, and in permitting such participation said purported election was rendered wholly illegal and void, in that none of said persons can

render services as employee of Objector and during the same hours and at the same place render services as employee of Times-Mirror Co.

14. That said Election Report and the findings therein do not represent or evidence a designation or selection of a representative or representatives for the purposes of collective bargaining or otherwise by a majority of persons claimed by the Board to be employees in a unit appropriate for such or any purposes.

15. That the unit defined by the Board for the purposes of said election and ballot is not and was not an appropriate unit within the provisions of the National Labor Relations Act.

16. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot, arbitrarily and without cause excluded therefrom all persons engaged in selling the Los Angeles Examiner for less than four hours per day, no matter where such person engaged in such selling activities or how long such selling activities had continued.

17. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot, arbitrarily and without cause excluded all persons engaged in selling the Los Angeles at "spots" where such selling had not continued for a consecutive period of six months, regardless of how long that particular person had been selling at other "spots" and re-

gardless of how many days per week or hours per day such person sold the Los Angeles Examiner.

18. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot, arbitrarily and without cause excluded all persons selling Los Angeles Examiner for less than five days per week, regardless of where, how long or how many hours per day such selling activity had been carried on.

19. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot, arbitrarily and without cause excluded all persons selling the Los Angeles Examiner who had been so engaged for thirty days or less.

20. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot, arbitrarily and without cause excluded all persons selling the Los Angeles Examiner in the Los Angeles metropolitan area but engaged in selling outside the city limits of Los Angeles.

21. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot, arbitrarily and without cause excluded all persons who otherwise sold the Los Angeles Examiner but who, for any reason except illness or vacation, were not selling on January 9, 1941.

22. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot arbitrarily and without cause excluded all persons who had begun to sell the Los Angeles Examiner since January 9, 1941.

23. That in determining the purported result of said election and ballot, said Board failed to count the ballots of all persons claimed by the Board to be entitled to vote and who did vote at said election and ballot.

24. That the National Labor Relations Board has no jurisdiction over Objector in that the National Labor Relations Act imposes jurisdiction in said Board only over persons occupying the relationship of employer and employee. That the relationship existing between the persons participating and balloting in said election and Objector is a vendor-vendee relationship between a manufacturer of goods, to wit, the Objector and persons buying such goods at wholesale for retail sale to the members of the general public. That the ordering of said election, the conducting thereof by the Board and the rendering of a purported Election Report thereon is in pursuance of an unlawful and illegal attempt by the Board to force the Objector to adopt a specific method of distribution of its product to the public, i.e., to force the Objector to distribute the same through employees rather than through independent merchandisers or news vendors as is now and has for many years in the past, been the usual and customary method

of distributing newspapers. That the ordering of said election, the conducting thereof by the Board and the rendering of a purported Election Report thereon is in pursuance of an illegal and unlawful attempt by the Board to impose the wishes and desires of the Board upon the Objector against its judgment and in defiance of its legal rights, in a matter relating solely to business practices and procedure. That such attempted arrogation of authority by the Board is wholly illegal and unlawful, and beyond the jurisdiction of the Board and in defiance of the pronouncement of the Supreme Court of the United States in the case of The Associated Press v. National Labor Relations Board, 301 U. S. 103, 132, 81 L. Ed. 953, 960, that "The Act (National Labor Relations Act) does not compel the petitioner (The Associated Press) to employ anyone."

25. That such attempted arrogation of power by the Board abridges the freedom of the Press guaranteed Objector by the First Amendment to the Constitution of the United States of America and seeks to and tends to and does unlawfully and illegally restrain, coree, and regulate the free dissemination of news to the public by the Objector, and to abridge the freedom of speech and the freedom of the Press guaranteed to Objector by said First Amendment to the Constitution of the United States.

26. That objection is also made to the destruction of any or all of the ballots marked or claimed to have been marked in said election.

Wherefore, Objector prays that said "Election Report" rendered herein be rejected and ordered stricken from the records and files of this proceeding and that said purported ballot conducted at Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, on May 15, 1941, between the hours of 9:00 A. M. and 5:00 P.M. be declared null and void and of no force and effect.

Dated at Los Angeles, California, this 5th day of September, 1941.

LAWLER, FELIX & HALL,
A. LAURENCE MITCHELL,
JOHN M. HALL,
By /s/ JOHN M. HALL,
Attorneys for Hearst Publications, Incorporated, Los Angeles Examiner Department, 800 Standard Oil Building, Los Angeles, California.

[Title of Board and Causes.]

Case No. R-1926

REPORT ON OBJECTIONS

This matter comes on before the Regional Director on the Objections to the Conduct of the Ballot and to the Election Report of Hearst Publications Incorporated, Los Angeles Examiner Department. The said Objections of Hearst Publications Incorporated, Los Angeles Examiner Department cover certain matters relating to the conduct of

the ballot held on May 15, 1941, among employees of Hearst Publications Incorporated, Los Angeles Examiner Department.

The undersigned has investigated the matters raised by the Objections to the conduct of the Ballot and to the Election Report and hereinafter sets forth his findings in connection therewith.

The undersigned has investigated the allegations raised in paragraphs number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 24 and 25, and finds these allegations are based upon facts which have been considered by the Board in its Direction of Election. The matters once having been before the Board and determined by it, the undersigned hereby overrules the objections in the paragraphs specified.

The undersigned has investigated the matters raised by the Objections to the Conduct of the Ballot and to the Election Report which appear in paragraph 11. That portion of the Objection quoted hereafter is considered at this time by the undersigned:

> "11. That in the conduct of said election and ballot a substantial number of the persons permitted to participate and ballot in said election were also permitted to participate and ballot in an election held at the same time and place among persons selling or claimed to be selling the Los Angeles Times, a publication of the Times-Mirror Co."

The elections described were held at the same time and place under authority vested in the under-

signed by the Rules and Regulations of the National Labor Relations Board, and the undersigned finds the allegations contained in the paragraph, as quoted in the foregoing, raise no substantial or material issue regarding the conduct of the balloting, and are hereby overrule. The undersigned finds the remainder of paragraph 11, that section not included in the above-quoted excerpt, is based upon facts which have been considered by the Board in its Direction of Election. The matter once having been before the Board and determined by it, the undersigned hereby overrules the objection in that portion of paragraph 11.

The undersigned has reviewed the Objection to the Conduct of the Ballot and to the Election Report and finds in paragraph 14 the following objection:

> "14. That said Election Report and the findings therein do not represent or evidence a designation or selection of a representative or representatives for the purposes of collective bargaining or otherwise by a majority of persons claimed by the Board to be employees in a unit appropriate for such or any purposes."

The undersigned overrules the objection in paragraph 14 in that the objection misconceives the purpose of the Election Report and has brought up a matter which raises no substantial or material issue regarding the conduct of the ballot.

The undersigned has reviewed the Objections to the Conduct of the Ballot and to the Election Re-

port and finds in paragraph 23 the following objection:

> "23. That in determining the purported result of said election and ballot, said Board failed to count the ballots of all persons claimed by the Board to be entitled to vote and who did vote at said election and ballot."

The undersigned finds the allegation contained in paragraph 23 of the Objections to the Conduct of the Ballot and to the Election Report has in no way raised a substantial or material issue regarding the conduct of the balloting and is hereby overruled.

The undersigned has reviewed the Objection to the Conduct of the Ballot and to the Election Report and finds in paragraph 26 the following objection:

> "26. That objection is also made to the destruction of any or all of the ballots marked or claimed to have been marked in said election."

The undersigned has reviewed the objection and finds the Objections to the Conduct of the Ballot and to the Election Report filed by Hearst Publications, Incorporated, Los Angeles Examiner Department, makes needless this objection in that said objections are anticipated and provided for in the Election Report in a paragraph which states:

> "Unless objections to this Report are filed within five days after receipt thereof, the Regional Director will destroy all marked ballots in this election."

Objections having been received within the 5-day period above mentioned, no further consideration is given by the undersigned to the objection in paragraph 26.

Dated: September 8, 1941.

[Seal] /s/ WM. R. WALSH,
Director National Labor Relations Board Twenty-first Region.

[Title of Board and Causes.]

Case No. R-1926

SUPPLEMENTAL DECISION and DIRECTION

Statement of the Case

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Elections[1] in the above-entitled proceedings.[2] Pursuant to the Direction of Elec-

---

[1] 28 N.L.R.B., No. 151.

[2] On May 15, 1941, Hearst Publications, Incorporated, (Los Angeles Examiner Department) Los Angeles, California, herein called the Los Angeles Examiner, filed its "Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Los Angeles Examiner Unit)," which the Board, by order dated May 26, 1941, overruled.

tions and various amendments thereto,[3] an election by secret ballot was conducted on May 15, 1941, under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California) among employees of the Los Angeles Examiner.[4] On August 29, 1941, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations — Series 2, as amended, issued his Election Report, copies of which were duly served upon the parties.

As to the balloting and its results, the Regional Director reported as follows:

Total on eligibility list	453
Total ballots cast	320
Total ballots challenged	152
Total blank ballots	1
Total void ballots	2
Total ballots not counted	155
Total ballots counted	165

[3] 29 N.L.R.B., No. 16; 29 N.L.R.B., No. 16a; 30 N.L.R.B., No. 110; 30 N.L.R.B., No. 110a; 31 N.L.R.B., No. 115.

[4] Pursuant to the said Decision and Direction of Elections, as amended separate elections were also conducted on May 14 and 15, 1941, among employees of Stockholders Publishing Company, Inc., Hearst Publications, Incorporated, (Los Angeles Evening Herald & Express Department) and The Times Mirror Company, all of Los Angeles, California. On July 30, 1941, the Board issued its Supplemental Decision and Certification of Representatives based upon the results of the said elections (33 N.L.R.B., No. 168).

Total votes for Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.[5] -- 100
Total votes against Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.-- 65

In his Election Report the Regional Director sustained 59 of the challenges, all by the Los Angeles Examiner, and overruled 93, of which 33 were by the Union and 60 by the Los Angeles Examiner. The 93 persons whose ballots were challenged and the challenges overruled are listed in the Appendix hereto annexed.

On or about September 5, 1941, the Los Angeles Examiner filed with the Regional Director Objections to the Conduct of the Ballot and to the Election Report, including, however, no objections to any of the Regional Director's rulings on the challenged ballots. The Union filed no objections to the Election Report. On September 8, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued his Report on Objections, copies of which were duly served upon the parties. We have considered the Los Angeles Examiner's Objections and find that they raise no substantial or material issues with respect to the conduct of the ballot. We hereby overrule the said Objections in their entirety.

Since the parties have not objected to the Regional Director's rulings on the challenged ballots we shall direct that the challenged ballots which he

---

[5] Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is herein called the Union.

ruled invalid shall not be counted and that those which he ruled valid shall be counted.

DIRECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Hearst Publications, Incorporated (Los Angeles Examiner Department), Los Angeles, California, the Regional Director for the Twenty-first Region (Los Angeles, California) shall, pursuant to the said Rules and Regulations and subject to Article III, Section 9, of said Rules and Regulations, within ten (10) days from the date of this Direction, open and count the ballots of the persons listed in the Appendix hereto annexed, and shall thereafter prepare and cause to be served upon the parties a Supplemental Election Report embodying his findings therein and his recommendations as to the results of the secret ballot.

Signed at Washington, D. C., this 26th day of Sep., 1941.

HARRY A. MILLIS, Chairman
WM. M. LEISERSON, Member

[Seal] NATIONAL LABOR RELATIONS BOARD

APPENDIX

A[6]

Backus, George H.
Bellizi, Angelo
Cameron, John
Dennis, W. R.
Gordon, William
Gorman, Edward
Gray, Harry
Greenfelt, Abraham
Hauser, George
Hansen, Henry
Harrigan, I.
Hayes, Carl
Henderson, Wallace
Jackson, William
Johnson, Charles
McGlynn, J. S.
Mortier, Emil
Negus, C. M.
Norris, Peter A.
Peterson, R. G.
Pollock, Robert
Price, Robert
Richard, T. L.
Shapiro, Sam
Shelly, Percy
Stepakoff, Bennie
Sullivan, Tom
Tabitt, William I.
Wiseman, Harry
Wright, Ruth
Uneman, I.
Domitaeder, Mike

B[7]

Addington, Ralph

C[8]

Colter, Russell
Mandel, Frank
Pacheco, Louis M.
Klaus, Wm.

D[9]

Oliver, Ernest
White, George
Oliver, J. E.
Jenny, Russell
Silk, Ennets

E[10]

Payer, John
Curry, Dorothy

F[11]

Lewis, Elmer
Winland, Chas. W.
Dukels, Max
Tomchen, Meyer
Bailey, Clarence
Renollett, C. M.
Barlett, E. J.
Cleary, John
Crowell, V. J.
Cervello, Alfred
Abourezk, Geo.
Roman, F. O.
Douthit, C.
Margolis, Sam
Thomson, K. R.

F (cont'd.)

Miller, Geo.
Frye, Wm. R.
Ullman, Albert
Russell, Wm. D.
Brown, John L.
Dominguez, E.
Smith, R. E.
Brown, A. T.
Mott, W. G.

G[12]

LaMont, Harry
Curtis, Joe
Fisher, P.
Brodie, Louis
Reyes, Gilbert
Marsh, Wm.
Porter, C. E.
Daly, John
Volk, Chris
Brown, Robt.
Esch, Oscar
Locke, Hans J.
Fields, Harry
Steele, Kenneth
Unger, Chas.
Herrera, Donald
Elmers, Ben
Duron, Armando
Hummel, Carl
Stoermer, Walter
Allen, Wm.
Duron, Daniel

H[13]

Sharp, Oscar B.
Gleeson, G.
Cohen, M.

---

[6]The persons listed in this group are all those listed in Appendix II of the Regional Director's Election Report.

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Vernon S. Green, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 26th day of September 1941, I mailed postpaid, bearing government frank, by registered mail, a copy of the Supplemental Decision and Direction to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union, No. 75, C.I.O.
Att.: Messrs. Pat Comorre, Gene L. Alley, and Roy Eley
Room 304, 212 W. 3rd St.
Los Angeles, Calif.

Gallagher, Wirin & Johnson
257 South Spring St.
Los Angeles, Calif.

---

[7]The person listed in this group is he person listed in Appendix III of the Election Report.

[8]The persons listed in this group are those listed in Appendix VIII of the Election Report.

[9]The persons in this group are those listed in Appendix X of the Election Report.

[10]The persons listed in this group are those listed in Appendix XI, Part B, of the Election Report.

[11]The persons listed in this group are those listed in Appendix XII, Part B, of the Election Report.

[12]The persons listed in this group are those listed in Appendix XIII of the Election Report.

[13]The persons listed in this group are three of those listed in Appendix XVIII of the Election Report.

Stockholders Publishing Company
12th & Los Angeles Sts.
Los Angeles, Calif.
L. B. Binford and Howard M. Binford, Esqs.
606 S. Hill St.
Los Angeles, Calif.
Hearst Publications, Inc. (Los Angeles Evening Herald & Express Depts.)
1243 Trenton St.
Los Angeles, Calif.
Flint and McKay
Att.: Messrs. Edward L. Compton and Donald W. Hamblin
458 S. Spring St.
Los Angeles, Calif.
Hearst Publications (Los Angeles Examiner Dept.)
410 Hearst Bldg.
San Francisco, Calif.
Lawler, Felix and Hall
Att.: Messrs. John M. Hall, Marcus Matson and A. L. Mitchell
605 W. Tenth St.
Los Angeles, Calif.
The Times Mirror Co.
2nd and Springs Streets
Los Angeles, Calif.
Cosgrove & O'Neil
Att.: Messrs. T. B. Cosgrove and F. B. Yeakim, Jr.
458 S. Spring St.
Los Angeles, Calif.

VERNON S. GREEN

Subscribed and sworn to before me this 26th day of September, 1941.

[Seal] IRVING HELBLING

My commission expires Sept. 2, 1945.

[Title of Board and Causes.]

Case No. R-1926

SUPPLEMENTAL ELECTION REPORT

Pursuant to the Rules and Regulations of the National Labor Relations Board—Series 2, as amended, Article III, Section 9, the undersigned hereby makes the following Supplemental Election Report:

On January 9, 1941, the National Labor Relations Board directed that an election by secret ballot be conducted among certain employees of Hearst Publications Inc., Los Angeles Examiner Department, and authorized and directed the undersigned to conduct said secret ballot.

Pursuant to said Direction of Election, the undersigned conducted said secret ballot in Los Angeles, California, on May 15, 1941.

The ballots used in the conduct of said secret ballot were in the form attached to this Report as Appendix "A" and made a part hereof. Said secret ballot was conducted in a manner conforming to the directions for the conduct of said secret ballot heretofore issued by the National Labor Relations Board, and full opportunity was accorded to all parties to this investigation to participate therein and to make challenges.

At the election the Company and the Union challenged the ballots of certain of the persons who presented themselves to vote at the election. Thereafter, the Regional Director considered the challenges of both parties, and on August 29, 1941, issued his Election Report, which was served upon the parties.

On September 5, 1941, the Hearst Publications Inc., Los Angeles Examiner Department, herein called the "Company," filed Objections to the Election Report.

On September 8, 1941, the Regional Director issued a Report on Objections, copies of which were duly served upon the parties. On that date, in accordance with the Rules and Regulations, Article III, Section 9, the Regional Director forwarded the Election Report, the Objections, and the Report on Objections to the Board in Washington.

On September 26, 1941, the Board issued its Supplemental Decision and Direction, in which the Board directed the Regional Director for the Twenty-first Region to open and count the ballots of the employees listed in Appendix "B" attached hereto and made a part hereof.

On October 1, 1941, pursuant to the said Supplemental Decision and Direction, the Regional Director for the Twenty-first Region did open and count the ballots of the individuals above referred to, in the presence of observers from each of the two parties, and at the conclusion of the count a memorandum of the count was entered into by the

parties. The memorandum is referred to as Appendix "S" of this report and is attached hereto and made a part hereof.

The undersigned hereby certifies that said secret ballot was fairly and impartially conducted and that the ballots cast were duly and fairly counted under his supervision, and that statements to such effect from the tellers have been filed with the undersigned.

Your attention is called to Article III, Section 9 of the Rules and Regulations—Series 2, as amended, issued by the National Labor Relations Board, which provides that within five (5) days after the serving of the Election Report, the parties to the proceeding may file with the Regional Director any objection to the ballot or the Election Report.

Unless objections to this report are filed within five (5) days after the receipt thereof, the Regional Director will destroy all the marked ballots in this election.

The undersigned hereby makes his findings with respect to the results of said secret ballot:

(Balloting and results as shown in Supplemental Decision and Direction issued by the National Labor Relations Board September 26, 1941:

Total on eligibility list	453
Total ballots cast	320
Total ballots challenged	152
Total blank ballots	1
Total void ballots	2

Total ballots not counted	155
Total ballots counted	165
Total votes for Los Angeles Newsboys Local Industrial Union No. 75, CI.O.	100
Total votes against Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.	65

In his Election Report the Regional Director sustained 59 of the challenges, all by the Los Angeles Examiner, and overruled 93, of which 33 were by the Union and 60 by the Los Angeles Examiner.)

Results of tabulation and count of ballots on October 1, 1941:

Total on eligibility list	453
Challenged ballots ordered counted by the Board	93
Challenged ballots ordered not counted by the Board	59
Challenged ballot envelopes opened	93
Challenged ballots contained therein	94
Challenged "Times" ballots sealed in challenged "Examiner" envelopes	2
Challenged "Times" ballot sealed in same envelope with valid "Examiner" ballot	1
Ballots voided because they were "Times" ballots improperly sealed in "Examiner" envelopes	3
Total challenged ballots counted	91
Ballots changing previous total	1
New total of total ballots cast	*321

*[At the original counting 165 ballots were counted, 1 was not counted because it was blank, 2 were not counted because they were void, and 152

were not taken from their challenge envelopes. Since 2 ballots were included in one of the 152 envelopes the total ballots challenged now becomes 153, thus changing the total ballots cast from 320 to 321.]

On the basis of the foregoing, the following is the tabulation and count of ballots and report of tabulation and count of challenged ballots:

Total on eligibility list	453
Total ballots cast	321
Total ballots challenged	153
Total challenged ballots counted	91
Opened challenged ballots not counted	3
Total challenged ballots not counted	62
Total votes previously counted for Los Angeles News Boys Industrial Union No. 75, C.I.O.	100
Total challenged ballots ordered counted by Board for Los Angeles News Boys Industrial Union No. 75, C.I.O.	61
Total votes for Los Angeles News Boys Industrial Union No. 75, C.I.O.	161
Total votes previously counted against Los Angeles News Boys Industrial Union No. 75, C.I.O.	65
Total challenged ballots ordered counted by Board against Los Angeles News Boys Industrial Union No. 75, C.I.O.	30
Total votes against Los Angeles News Boys Industrial Union No. 75, C.I.O.	95

Dated: October 3, 1941.

[Seal] /s/ WILLIAM R. WALSH, Director
Twenty-first Region
National Labor Relations
Board
Los Angeles, California

(Copy)

INTER-OFFICE COMMUNICATION
NATIONAL LABOR RELATIONS BOARD

Date October 9, 1941

TO—G. L. Patterson, Director of Field Division
From—William R. Walsh, Director 21st Region
Subject—Hearst Publications Inc., Los Angeles Examiner Department.

OBJECTIONS NOT FILED

This is to certify that no Objections to the Supplemental Election Report in the above case have been filed by any of the parties within the 5 days provided therefor in Article II, Section 9, of the Rules and Regulations—Series 2, as amended.

We are attaching hereto the original of the Supplemental Election Report, the Affidavit of Service, Registered Receipts and Return Receipt cards.

/s/ W R W
WILLIAM R. WALSH
Director

GVS
Encl/2

[Title of Board and Causes.]

Case No. R-1926

CERTIFICATION OF REPRESENTATIVES

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Elections in the above-entitled proceedings.[1] Pursuant to the Direction of Elections and various amendments there,[2] an election by secret ballot was conducted on May 15, 1941, under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California), among employees of Hearst Publications, Incorporated (Los Angeles Examiner Department), Los Angeles, California, herein called the Los Angeles Examiner.[3] On September 26, 1941, the Board issued a Supplemental Decision and Direction[4] which, inter alia, directed the Regional Director to open and count the challenged ballots cast by 93 persons named in the Supplemental Decision and

[1] 28 N.L.R.B., No. 151.

[2] 29 N.L.R.B., No. 16; 29 N.L.R.B., No. 16a; 30 N.L.R.B., No. 110; 30 N.L.R.B., No. 110a; 31 N.L.R.B., No. 115.

[3] Pursuant to the said Decision and Direction of Elections, as amended, separate elections were also conducted on May 14 and 15, 1941, among employees of Stockholders Publishing Company, Inc., Hearst Publications, Incorporated, (Los Angeles Evening Herald & Express Department) and The Times Mirror Company, all of Los Angeles, California. On July 30, 1941, the Board issued its Supplemental Decision and Certification of Representatives based upon the results of the said elections (33 N.L.R.B., No. 168).

[4] 35 N.L.R.B., No. 179.

Direction. On October 3, 1941, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, issued his Supplemental Election Report, copies of which were duly served upon the Los Angeles Examiner and upon Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.

In his Supplemental Election Report the Regional Director reported that on October 1, 1941, he opened and counted the challenged ballots referred to, and that the final tabulation of the result of the balloting was as follows:

Total on eligibility list	453
Total ballots cast	321[5]
Total ballots challenged	153
Total challenged ballots counted	91
Opened challenged ballots not counted	3
Total challenged ballots not counted	62
Total votes for Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.	161
Total votes against Los Angeles Newsboys Local Union No. 75, C.I.O.	95

[5]In the Board's Supplemental Decision and Direction of September 26, 1941, we stated that the Regional Director reported that the ballots cast totaled 320 and that the challenged ballots totaled 152. In his Supplemental Election Report the Regional Director reported that 1 of the challenge envelopes contained 2 ballots, so that in fact 321 ballots had been cast, 153 of which had been challenged. The extra ballot referred to was found to be for an election among employees of another employer and was therefore, as stated below, not counted.

The Regional Director reported that the 3 challenged ballots which were opened pursuant to said Supplemental Decision and Direction but not counted were ballots for an election held among employees of another employer.

No objections to the counting of the challenged ballots or to the Supplemental Election Report have been filed by any of the parties.

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended,

It Is Hereby Certified that Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., has been designated and selected by a majority of all employees of Hearst Publications, Incorporated (Los Angeles Examiner Department), Los Angeles, California, who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, as their representative for the purpose of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Washington, D. C., this 20 day of October, 1941.

HARRY A. MILLIS
Chairman
WM. M. LEISERSON
Member
[Seal] NATIONAL LABOR
RELATIONS BOARD

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Vernon S. Green, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 20th day of October 1941, I mailed postpaid, bearing government frank, by registered mail, a copy of the Certification of Representatives to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union, # 75, C.I.O.
Att: Pat Comorre, Gene L. Alley & Roy Eley
Room 304, 212 W. 3rd Street
Los Angeles, Calif.

Gallagher, Wirin & Johnson
257 S. Spring Street
Los Angeles, Calif.

Stockholders Publishing Co.
12th & Los Angeles Streets
Los Angeles, Calif.

L. B. Binford and Howard M. Binford
606 S. Hill Street
Los Angeles, Calif.

Hearst Publications, Inc., (Los Angeles Evening Herald & Express Dept.)
1243 Trenton Street
Los Angeles, Calif.

Flint and McKay
Att: Edward L. Compton and Donald W. Hamblin
458 S. Spring Street
Los Angeles, Calif.

Hearst Publications (Los Angeles Examiner Department)
410 Hearst Building
San Francisco, Calif.

Lawler, Felix and Hall
Att: John M. Hall, Marcus Matson and A. L. Mitchell
605 W. Tenth Street
Los Angeles, Calif.

The Times Mirror Co.
2nd & Spring Streets
Los Angeles, Calif.

Cosgrove & O'Neil
Att: T. B. Cosgrove & F. B. Yoakim, Jr.
458 S. Spring Street
Los Angeles, Calif.

/s/ VERNON S. GREEN

Subscribed and sworn to before me this 20th day of October 1941.

[Seal] IRVING HELBLING

My commission expires: Sept. 2, 1945.

BOARD'S EXHIBIT No. 1-A

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI C1840

Date Filed 8/28, 1941
209 inv.

In the Matter of THE HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD AND EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that The Hearst Publications, Incorporated. (Los Angeles Evening Herald and Express Department) 1243 Trenton, Los Angeles, Calif. has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that said company, through its officers and agents, has refused to recognize and bargain with Los Angeles Newsboys Local Industrial Union

No. 75, C.I.O. since August 12, 1941, the date on which such request was made by the union; and that the company has at all times since that date refused to meet with and recognize the union, although said union was, on July 30, 1941, certified by the National Labor Relations Board as the sole agent in collective bargaining for all newsboys employed by the company, a violation of Section 8, subsection (5) of the Act.

By this refusal to meet with the bargaining agent designated by the National Labor Relations Board, and by other acts and statements, it by its officers and agents, has interfered with and restrained its employees in the exercise of the rights guaranteed them in Section 7, a violation of Section 8, subsection (1) of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS
LOCAL INDUSTRIAL
UNION NO. 75, CIO
PAT COMORRE
By: Pat Comorre, Secretary
212 W. 3rd St., Los Angeles, Calif.
MUtual 5747

Subscribed and sworn to before me this 28th day of August, 1941. At Los Angeles, Calif.

ROGER G. McGUIRE,
Field Examiner
National Labor Relations Board
U. S. Post Office & Court House Bldg.
Los Angeles, California.

BOARD'S EXHIBIT No. 1-B

United States of America
National Labor Relations Board

I, Beatrice M. Stern, Executive Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

ORDER CONSOLIDATING CASES

In the Matter of The Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. Case No. XXI-C-1840.

Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. Case No. XXI-C-1843

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor

Relations Board to be affixed this 24th day of October A. D. 1941, at Washington, D. C.

[Seal] BEATRICE M. STERN
Executive Secretary.

[Title of Board and Causes.]

Cases Nos. XXI-C-1840, 1843

ORDER CONSOLIDATING CASES

Charges, pursuant to Section 10(b) of the Act, having been filed in the above-entitled cases, and the Board having duly considered the matter and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act,

It Is Hereby Ordered, pursuant to Article II, Section 36(b), of National Labor Relations Board Rules and Regulations—Series 2, as amended, that these cases be, and they hereby are, consolidated.

Dated, Washington, D. C., October 23, 1941.

By direction of the Board:

[Seal] BEATRICE M. STERN
Executive Secretary

BOARD'S EXHIBIT No. 1-C

Case No. XXI-C-1840

[Title of Board and Cause.]

COMPLAINT

It having been charged by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., chartered by the Congress of Industrial Organizations, that

Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), hereinafter called "Respondent," has engaged in and is engaging in at Los Angeles, California, certain unfair labor practices affecting commerce as set forth and defined in National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter referred to as "Act," the National Labor Relations Board, by its Regional Director for its Twenty-first Region, designated as agent of said Board by Article IV, Section 1, subsection (e), and Article II, Section 5 of its Rules and Regulations, Series 2, as amended, hereby issues its Complaint and alleges the following:

1. Hearst Publications, Incorporated, is and, at all times herein after referred to, has been a corporation, organized and existing under and by virtue of the laws of the State of California. Said corporation has its principal office and place of business in San Francisco, California. It is engaged in the publication, distribution and sale of various daily and Sunday newspapers including Los Angeles Evening Herald & Express, hereinafter referred to as "Herald."

2. The Herald is an evening paper published daily except Sunday at its plant in Los Angeles, California. Said paper is distributed throughout the State of California but principally in the metropolitan area of Los Angeles. In addition a considerable portion of its daily circulation is sold and distributed outside the State of California.

3. Respondent in the conduct of its above-described business of publishing, selling, and distributing the Herald as aforesaid, causes and continuously has caused large quantities of raw materials used in its business, including specifically but without limitation thereby, newsprint and mats to be transported into the State of California from other states of the United States and from foreign countries.

4. Respondent in the conduct of its aforedescribed business of publishing, selling, and distributing the Herald daily supplies news to and daily receives news from several well-known news services which gather and disseminate news nationally and internationally. Said Respondent in the conduct of this business likewise daily receives and publishes numerous feature services, the material for many of which is prepared and originates in states of the United States other than the State of California. Further, said Respondent in the conduct of this business daily publishes in substantial amounts advertising originating outside the State of California.

5. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., hereinafter called "Union," is a labor organization within the meaning of Section 2, subsection (5) of the Act.

6. A unit for the purposes of collective bargaining, composed of all employees of Respondent who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, ex-

cluding bootjackers, temporary, casual, and part-time newsboys, would insure to such employees of Respondent the full benefit of their right to self-organization and to collective bargaining and would otherwise effectuate the policies of the Act. Said unit is, therefore, appropriate for the purposes of collective bargaining between the representatives of such employees of Respondent and Respondent.

7. By May 14, 1941, or before that date, a majority of the employees of Respondent within the unit set forth in paragraph 6 had designated the Union as their representative for the purpose of bargaining collectively with the Respondent with respect to their compensation, hours of employment and other conditions of employment. This majority status of the Union within this unit has continued up to and including the date of this Complaint.

8. Since on or about August 12, 1941, Respondent, while engaged in its aforedescribed business at Los Angeles, California, has continuously failed and/or refused and does now fail and/or refuse to bargain collectively in good faith with the Union.

9. By this continuous failure and/or refusal to bargain with the Union as set out in the immediately preceding paragraph, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of the Act.

10. The acts of Respondent set out in paragraph 8 occurring in connection with the operation of its business as described in paragraphs 1, 2, 3, and 4

have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

11. The acts of Respondent set out in paragraph 8 constitute unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on the 25th day of October, 1941, issues its Complaint against Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), Respondent herein.

NOTICE OF HEARING

Please Take Notice That on the 10th day of November, 1941, in Room 808, U. S. Post Office and Court House Building, Los Angeles, California, at 10:00 o'clock in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with Article IV and Article II, Section 23, of its Rules and Regulations, Series 2, as amended, on the allegations of the Complaint hereinabove set forth, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are Further Notified that you have the right to file with the undersigned, acting in this matter as the agent of the National Labor Relations Board,

an answer to the foregoing Complaint, on or before the 7th day of November, 1941.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 2, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations, Series 2, as amended.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown directs that a given exhibit need not be duplicated.

In Witness Whereof, the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by its Regional Director for its Twenty-first Region on the 25th day of October, 1941.

[Seal] WM. R. WALSH,
Regional Director, Twenty-first Region, National Labor Relations Board, 808 U. S. Postoffice & Courthouse, Los Angeles, California.

BOARD'S EXHIBIT No. 1-G

[Title of Board and Cause.]

Case No. XXI-C-1840

MOTION TO DISMISS COMPLAINT

Comes now Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and appearing for itself alone, and appearing specially and not generally, and only for the purpose of this motion, moves to dismiss the complaint issued herein by the National Labor Relations Board through its Regional Director for the Twenty-first Region.

Said motion is made on each and all of the following grounds:

1. That the National Labor Relations Board has no jurisdiction over respondent.

2. That respondent is not engaged in commerce among the several states, or between the District of Columbia or any territory of the United States and any state or other territory or between any foreign country or any state, territory or the District of Columbia or within the District of Columbia or any territory or between points in the same state or territory or any other state or territory or the District of Columbia or any foreign country; and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

3. That no member of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. is an employee of respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

4. That the persons particularly referred to in paragraph 6 of the complaint, to-wit, full-time newsboys and checkmen, operating within Los Angeles, California, in so far as their news vending activities are concerned, are not employees of, nor is any one of them an employee of, this respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

5. That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., and the full-time newsboys and checkmen mentioned in the complaint are, in the conduct of their respective news vending activities, engaged solely in intrastate commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

6. That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. and the full-time newsboys and checkmen referred to in the complaint are not, in the conduct of their news vending activities, engaged in interstate commerce, or in any business activity having a close, intimate, substantial, or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

7. That no refusal of respondent to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. can burden or obstruct commerce, and such refusal can not and has not led or tended to lead, and can not and does not now, and will not, lead or tend to lead to a labor dispute burdening or

obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

8. That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the full-time newsboys and checkmen, or any of them, can or will burden or obstruct commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

9. That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the full-time newsboys and checkmen, or any of them, can or will lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

10. That the National Labor Relations Board has no jurisdiction over the relations of this respondent with persons engaged in the independent business of vending the newspapers published by this respondent.

This motion is made by respondent in reliance upon the rights granted by Article II, Sections 14 to 18, inclusive, of Rules and Regulations, Series 2, as amended, of the National Labor Relations Board, and its right to make this motion, or to object to any ruling upon the same shall not be deemed waived by the filing of an answer or by other participation by this respondent in the proceedings before the Trial Examiner or the Board.

Dated at Los Angeles, California, this 7th day of November, 1941.

FLINT & MACKAY,
By EDWARD L. COMPTON,
Attorneys for Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department).

BOARD'S EXHIBIT No. 1-H

[Title of Board and Causes.]

Case No. XXI-C-1840

ANSWER OF HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT)

Comes now Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) hereafter called "respondent", and reserving all rights asserted in all pleadings and documents heretofore filed by it in Case No. XXI-R-928 and/or Case No. R-1926, and under its Motion to Dismiss Complaint filed concurrently herewith, files this its answer to the complaint issued herein by National Labor Relations Board through its Regional Director for the Twenty-First Region.

1. Admits the allegations of paragraph 1 of the complaint, but in this connection alleges that the Los Angeles Evening Herald & Express is pub-

lished at its plant situated in Los Angeles, California, in which plant no other business is conducted, and that the publication, distribution and sale of the Los Angeles Evening Herald & Express is a separate business enterprise of the Los Angeles Evening Herald & Express Department of Hearst Publications, Incorporated, with which no other department of Hearst Publications, Incorporated has any connection.

2. Answering paragraph 2 of the complaint, respondent denies that a considerable or any substantial portion of its daily circulation is sold or distributed outside the State of California, and in this connection alleges that on the average not to exceed 37/100 of 1% of its daily circulation is sold and distributed outside the State of California.

3. Answering paragraph 3 of the complaint, respondent admits that in the conduct of its business respondent uses large quantities of newsprint and mats, all of which are purchased without the State of California; denies specifically each and every allegation of paragraph 3 of the complaint not in this paragraph specifically admitted.

4. Admits the allegations of paragraph 4 of the complaint.

5. Denies specifically the allegations of paragraph 5 of the complaint.

6. Denies specifically the allegations of paragraph 6 of the complaint.

7. Denies specifically the allegations of paragraph 7 of the complaint.

8. Admits the allegations of paragraph 8 of the

complaint but in explanation of this admission alleges that it has refused to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., upon the advice of competent counsel and in the bona fide belief that the National Labor Relations Board had or has no jurisdiction over respondent with respect to respondent's relationship with its newsvendors, who are independent contractors and not employees.

9. Answering paragraph 9 of the complaint, respondent denies that by reason of continuous or any failure and or refusal to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as alleged in paragraph 8 of the complaint, respondent has engaged in or is engaging in an unfair labor practice, or unfair labor practices, within the meaning of Section 8, subsection (1) or Section 8, subsection (5) of the National Labor Relations Act.

10. Denies specifically the allegations of paragraph 10 of the complaint.

11. Denies specifically the allegations of paragraph 11 of the complaint.

For a second, separate and further defense and answer, respondent alleges:

That the National Labor Relations Board has no jurisdiction over respondent.

For a third, separate and further defense and answer, respondent alleges:

That respondent is not engaged in commerce among the several states, or between the District

of Columbia or any territory of the United States and any state or other territory or between any foreign country or any state, territory or the District of Columbia or within the District of Columbia or any territory or between points in the same state or territory or any other state or territory or the District of Columbia or any foreign country, and, therefore, the National Labor Relations Board has no jurisdiction of respondent.

For a fourth, separate and further defense and answer, respondent alleges:

That no member of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. is an employee of respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a fifth, separate and further defense and answer, respondent alleges:

That the persons particularly referred to in paragraph 6 of the complaint, to-wit, full-time newsboys and checkmen, operating within Los Angeles, California, in so far as their news vending activities are concerned, are not employees of, nor is any one of them an employee of, this respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a sixth, separate and further defense and answer, respondent alleges:

That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., and the full-time newsboys and checkmen mentioned in the complaint are, in the conduct of their respective

news vending activities, engaged solely in intrastate commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a seventh, separate and further defense and answer, respondent alleges:

That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. and the full-time newsboys and checkmen referred to in the complaint are not, in the conduct of their news vending activities, engaged in interstate commerce, or in any business activity having a close, intimate, substantial, or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For an eighth, separate and further defense and answer, respondent alleges:

That no refusal of respondent to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. can burden or obstruct commerce, and such refusal can not and has not led or tended to lead, and can not and does not now, and will not lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a ninth, separate and further defense and answer, respondent alleges:

That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the full-time news-

boys and checkmen, or any of them, can or will burden or obstruct commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over rsepondent.

For a tenth, separate and further defense and answer, respondent alleges:

That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the full-time newsboys and checkmen, or any of them, can or will lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For an eleventh, separate and further defense and answer, respondent alleges:

That the National Labor Relations Board has no jurisdiction over the relations of this respondent with persons engaged in the independent business of vending the newspapers published by this respondent.

Wherefore, respondent prays that the complaint herein be dismissed.

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT), a Corporation
1243 Trenton Street,
Los Angeles, California.

FLINT & MAC KAY
By EDWARD L. COMPTON
Attorneys for Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department)

(Duly verified.)

BOARD'S EXHIBIT No. 2-A

United States of America

Before the National Labor Relations Board
21st Region

Case No. XXI, C 1843
Date filed 9/3/1941

627 involved
3000 total employees

In the Matter of TIMES-MIRROR COMPANY AND LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Times-Mirror Company, 202 W. 1st Street, Los Angeles, California has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that said Company, through its officers and agents, has refused to recognize and bargain with

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., since September 3, 1941, the date on which such request was made by the Union; and that the Company has at all times since that date refused to meet with and recognize the Union, although said Union was, on July 30, 1941, certified by the National Labor Relations Board as the sole agent in collective bargaining for all newsboys employed by the Company, a violation of Section 8, subsection (5) of the Act.

By this refusal to meet with the bargaining agent designated by the National Labor Relations Board, and by other acts and statements, it by its officers and agents, has interfered with and restrained its employees in the exercise of the rights guaranteed them in Section 7, a violation of Section 8, subsection (1) of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS
LOCAL INDUSTRIAL
UNION NO. 75, C. I. O.
By PAT COMORRE,
Pat Comorre, Secretary
212 W. 3rd St.,
Los Angeles, Calif.
MUtual 5747

Subscribed and sworn to before me this 3 day of September, 1941. At Los Angeles, Calif.

ROGER G. McGUIRE,
Field Examiner, National Labor Relations Board, 21st Region, Los Angeles, Calif.

BOARD'S EXHIBIT No. 2-C

[Title of Board and Causes.]

Case No. XXI-C-1843

COMPLAINT

It having been charged by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., chartered by the Congress of Industrial Organizations, that The Times-Mirror Company, hereinafter called "Respondent," has engaged in and is engaging in at Los Angeles, California, certain unfair labor practices affecting commerce as set forth and defined in National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter referred to as "Act," the National Labor Relations Board, by its Regional Director for its Twenty-first Region, designated as agent of said Board by Article IV, Section 1, subsection (c), and Article II, Section 5 of its Rules and Regulations, Series 2, as amended, hereby issues its Complaint and alleges the following:

1. Respondent is and, at all times hereinafter referred to, has been a corporation organized and existing under and by virtue of the laws of the

State of California. Said Respondent has its principal office and place of business in Los Angeles, California. It is engaged in the publication, distribution, and sale of "The Los Angeles Times," hereinafter referred to as "Times," published daily including Sunday, at its plant in Los Angeles, California.

2. The Times is distributed throughout the State of California but principally in the metropolitan area of Los Angeles. In addition a considerable portion of its daily and Sunday circulation is sold and distributed outside the State of California.

3. Respondent in the conduct of its above-described business causes and continuously has caused large quantities of raw materials used in its business, including specifically but without limitation thereby, newsprint and mats to be transported in to the State of California from other states of the United States and from foreign countries.

4. Respondent in the conduct of its aforedescribed business daily supplies news to and daily receives news from various other newspapers published outside the State of California and certain well known news services which gather and disseminate news nationally and internationally. Said Respondent in the conduct of this business likewise daily publishes numerous feature services received from points located outside the State of California. Further, said Respondent in the conduct of this business daily publishes in substantial amounts

advertising originating outside the State of California.

5. Los Angeles Newsboys Local Industrial Union No. 75, C. J. O., hereinafter called "Union," is a labor organization within the meaning of Section 2, subsection (5) of the Act.

6. A unit for the purposes of collective bargaining composed of all employees of the Repondent who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, excluding temporary newsboys, would insure to such employees of Respondent the full benefit of their right to self-organization and to collective bargaining and would otherwise effectuate the policies of the Act. Said unit is, therefore, appropriate for the purposes of collective bargaining between the representatives of such employees of Respondent and Respondent.

7. By May 15, 1941, or before that date, a majority of the employees of Respondent within the unit set forth in paragraph 6 had designated the Union as their representative for the purpose of bargaining collectively with the Respondent with respect to their compensation, hours of employment and other conditions of employment. This majority status of the Union within this unit has continued up to and including the date of this Complaint.

8. Since on or about September 3, 1941, Respondent, while engaged in its aforedescribed busi-

ness at Los Angeles, California, has continuously failed and/or refused and does now fail and/or refuse to bargain collectively in good faith with the Union.

9. By this continuous failure and/or refusal to bargain with the Union as set out in the immediately preceding paragraph, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of the Act.

10. The acts of Respondent set out in paragraph 8 occurring in connection with the operation of its business as described in paragraphs 1, 2, 3, and 4 have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

11. The acts of Respondent set out in paragraph 8 constitute unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on the 25th day of October, 1941, issues its Complaint against The Times-Mirror Company, Respondent herein.

NOTICE OF HEARING

Please take notice that on the 10th day of November, 1941, in Room 808, U. S. Post Office and Court House Building, Los Angeles, California, at

10:00 o'clock in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with Article IV and Article II, Section 23 of its Rules and Regulations, Series 2, as amended, on the allegations of the Complaint hereinabove set forth, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the undersigned, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing Compliant, on or before the 7th day of November, 1941.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 2, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations, Series 2, as amended.

Please take notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown directs that a given exhibit need not be duplicated.

In witness whereof, the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by its Regional Director

for its Twenty-first Region on the 25th day of October, 1941.

/s/ WILLIAM R. WALSH

[Seal] William R. Walsh
Regional Director, Twenty-first Region, National Labor Relations Board
808 U. S. Postoffice & Courthouse, Los Angeles, California

BOARD'S EXHIBIT No. 2-G

[Title of Board and Causes.]

Case No. XXI-C-1843

MOTION TO DISMISS COMPLAINT

Comes now The Times-Mirror Company (hereafter called "respondent"), and severing itself from all other persons and appearing specially for the purpose of objecting to the jurisdiction of the National Labor Relations Board, moves to dismiss the complaint issued herein by National Labor Relations Board through its Regional Director for the Twenty-first Region.

Said motion is made on each and all of the following grounds:

1. No one of the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is an employee of respondent.

2. Each and all of the newsboys engaged in the street sales of the Los Angeles Times is and are independent contractors.

3. No question affecting commerce has arisen or

can arise concerning the representation of the alleged employees (said newsboys selling the Los Angeles Times).

4. The National Labor Relations Board has no jurisdiction over respondent or over the business conducted by it.

5. The relations of respondent with the alleged employees (said newsboys selling the Los Angeles Times) are not subject to the jurisdiction of the Board.

6. No claimed labor dispute between respondent and said alleged employees (said newsboys selling the Los Angeles Times) can affect commerce within the meaning of the National Labor Relations Act.

The right to make this motion or to object to any adverse ruling on the same shall not be deemed waived by respondent by any participation by it in the proceedings before the Trial Examiner or the Board or by the filing of an answer herein; the movant relies upon Art. II, Secs. 14-18, inclusive, of Rules and Regulations, Series 2, as amended, of the National Labor Relations Board.

Dated: November 4, 1941.

COSGROVE & O'NEIL,
T. B. COSGROVE,
F. B. YOAKUM, JR.,
By /s/ F. B. YOAKUM, JR.
Attorneys for The Times-Mirror Company

BOARD'S EXHIBIT No. 2-H

[Title of Board and Causes.]

Case No. XXI-C-1843

ANSWER OF THE TIMES-MIRROR COMPANY

Comes now The Times-Mirror Company (hereafter called "respondent"), and severing itself from all other persons, and reserving all rights asserted in all pleadings and documents heretofore filed by it in Case No. XXI-R-1062 and or Case No. R-1925, and under its Motion to Dismiss Complaint filed concurrently herewith, files this, its Answer to complaint issued herein by National Labor Relations Board through its Regional Director for the Twenty-First Region.

1. Admits the allegations of paragraph 1 of the complaint.

2. Admits that the Los Angeles Times is distributed throughout the State of California and principally in the metropolitan area of Los Angeles.

Denies specifically each and every allegation of paragraph 2 of the complaint not in this paragraph specifically admitted.

3. Admits that in the conduct of its business respondent uses large quantities of newsprint and mats, all of which are purchased without the State of California.

Denies specifically each and every allegation of paragraph 3 of the complaint not in this paragraph specifically admitted.

Board's Exhibit No. 2-H—(Continued.)

4. Admits the allegations of paragraph 4 of the complaint.

5. Denies specifically the allegations of paragraph 5 of the complaint.

6. Denies specifically the allegations of paragraph 6 of the complaint.

7. Denies specifically the allegations of paragraph 7 of the complaint.

8. Admits the allegations of paragraph 8 of the complaint, but in explanation of this admission alleges that its refusal to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., was done on advice of competent counsel and in the bona fide belief that the National Labor Relations Board has no jurisdiction over respondent with respect to respondent's relationship with its news vendors, who are independent contractors and not employees.

9. Denies that by reason of continuous or any failure and/or refusal to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as alleged in paragraph 8 of the complaint, respondent has engaged in or is engaging in an unfair labor practice or unfair labor practices within the meaning of Section 8, subsection 1, or Section 8, subsection 5, of the National Labor Relations Act.

10. Denies specifically the allegations of paragraph 10 of the complaint.

11. Denies specifically the allegations of paragraph 11 of the complaint.

Board's Exhibit No. 2-H—(Continued.)

For a Second, Separate and Further Defense and Answer, Respondent Alleges:

The Industrial Accident Commission of the State of California, in decisions rendered shortly prior to the decision of the National Labor Relations Board ordering an election among certain news vendors selling the Los Angeles Times, and also subsequent to said decision of the Board, has ruled that news vendors selling the Los Angeles Times within the city limits of Los Angeles, California, were not employees of The Times-Mirror Company, but on the contrary were independent contractors. One of these decisions is entitled "Pendergast v. Times-Mirror Publishing Company et al." It was rendered August 9, 1940. A copy of said decision is attached hereto, marked "Exhibit A", and made a part hereof. The news vendor John C. Pendergast is one of the news vendors whose names appear on Times' Exhibit-6 (page 26) of documents introduced at the hearing in the Investigation and Certification Proceeding (Case No. XXI-R-1062).

Another such decision is entitled "Reich v. The Times-Mirror Company et al." It was rendered August 25, 1941. A copy of said decision is attached hereto, marked "Exhibit B", and made a part hereof. The news vendor Ike Reich is also one of the news vendors whose names appear on said Times' Exhibit 6 (page 20).

The activities of these news vendors, John C. Pendergast and Ike Reich, and their relations

Board's Exhibit No. 2-H—(Continued.)

with respondent are the same as the activities and relations with respondent of those news vendors selling the Los Angeles Times who testified at said Investigation and Certification Proceeding.

Another recent decision of the Industrial Accident Commission which is pertinent in establishing that the status of the news vendors who testified at said Investigation and Certification Proceeding is that of independent contractor and not that of employee, is entitled "Abe Goren v. Hearst Publications, Inc." It was rendered August 26, 1941. A copy of said decision is attached hereto, marked "Exhibit C", and made a part hereof.

For a Third, Separate and Further Defense and Answer, Respondent Alleges:

No one of the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is an employee of respondent.

For a Fourth, Separate and Further Defense and Answer, Respondent Alleges:

Each and all of the newsboys engaged in the street sale of Los Angeles Times is and are independent contractors.

For a Fifth, Separate and Further Defense and Answer, Respondent Alleges:

No question affecting commerce has arisen or can arise concerning the representation of the alleged employees (said newsboys selling the Los Angeles Times) of respondent.

Board's Exhibit No. 2-H—(Continued.)

For a Sixth, Separate and Further Defense and Answer, Respondent Alleges:

The National Labor Relations Board has no jurisdiction over respondent or the business conducted by it.

For a Seventh, Separate and Further Defense and Answer, Respondent Alleges:

The relations of respondent with the alleged employees (said newsboys selling the Los Angeles Times) are not subject to *the jurisdiction of said* Board.

For an Eighth, Separate and Further Defense and Answer, Respondent Alleges:

No claimed labor dispute between respondent and said alleged employees (said newsboys selling the Los Angeles Times) can affect commerce within the meaning of the National Labor Relations Act.

Wherefore, respondent prays that the complaint herein be dismissed.

THE TIMES-MIRROR COMPANY, A CORPORATION.
202 West First Street, Los Angeles, California.
COSGROVE & O'NEIL,
E. B. COSGROVE,
F. B. YOAKUM, JR.,
By /s/ F. B. YOAKUM, Jr.,
Attorneys for The Times-Mirror Company.

Board's Exhibit No. 2-H—(Continued.)

(Exhibit A)

Before the Industrial Accident Commission of the State of California

Claim No. L. A. 47967

Filed: August 9, 1940.

JOHN C. PENDERGAST,

Applicant,

vs.

TIMES-MIRROR PUBLISHING COMPANY, a corporation and PACIFIC EMPLOYERS INSURANCE COMPANY, a corporation,

Defendants.

DECISION AFTER REHEARING

Findings and Award issued on December 26, 1939 and a rehearing having been granted, and a further hearing having been had before Ralph E. Mustoe, Referee, and the matter having been submitted to the Commission for decision, and

The undersigned Commissioners having each read and considered the entire record, this Commission now makes its Decision After Rehearing as follows:

FINDINGS OF FACT

1. John C. Pendergast, while engaged as a newsvendor on November 2, 1939 at Los Angeles, California, sustained an injury.

2. At said time applicant was engaged in selling newspapers of defendant Times-Mirror Pub-

Board's Exhibit No. 2-H—(Continued.)

lishing Company, a corporation, whose insurance carrier was Pacific Employers Insurance Company, a corporation.

3. The evidence does not establish that said applicant was at said time an employee of defendant Times-Mirror Publishing Company, a corporation, or an employee at all, but that at said time said employee was an independent contractor and that the title to the newspapers sold by him actually passed from said defendant Times-Mirror Publishing Company, a corporation, to said applicant, within the meaning of Section 3352-c of the Labor Code.

AWARD

Now, Therefore, It Is Ordered that applicant take nothing by reason of his claim asserted in this proceeding and that the defendants be dismissed and discharged from liability herein.

Dated at San Francisco, California, Aug. 9, 1940.

INDUSTRIAL ACCIDENT
COMMISSION OF THE
STATE OF CALIFORNIA,
T. A. READDON,
LAFAYETTE J. MADDUX,
Commissioners.

(Seal of Industrial Accident Commission, State of California.)

Claim No. L. A. 47967
JHA:EG
Page 2

Board's Exhibit No. 2-H—(Continued.)

(Exhibit B)

Before the Industrial Accident Commission of the State of California

Claim No. L. A. 53-435

Filed August 25, 1941.

IKE REICH,

Applicant,

vs.

THE TIMES-MIRROR COMPANY, a corporation and PACIFIC EMPLOYERS INSURANCE COMPANY, a corporation,

Defendants.

FINDINGS AND AWARD

Theodore J. Levitan, attorney for applicant.

F. B. Yoakum, attorney for defendant employer.
F. B. McConnell, attorney for carrier.

An application for adjustment of claim for compensation having been filed herein, and all parties having appeared, and the matter having been regularly submitted for decision, W. Bond, Referee, makes his Findings and Award as follows:

FINDINGS OF FACT.

1. Ike Reich, applicant, occupation news vendor, sustained an injury on October 6, 1940, when

Board's Exhibit No. 2-H—(Continued.)

he was struck by an automobile at Los Angeles, California.

2. On said date defendant The Times-Mirror Company, a corporation, was insured under the compensation laws by Pacific Employers Insurance Company, a corporation.

3. The evidence does not establish that said applicant was on said date an employee of the defendant The Times-Mirror Company, a corporation, or an employee at all, but that on said date said employee was an independent contractor and that the title to the newspapers sold by him actually passed from said defendant The Times-Mirror Company, a corporation, to said applicant within the meaning of Section 352-c of the Labor Code.

AWARD

Now, Therefore, It Is Ordered that applicant take nothing by reason of the claim asserted and that said defendants be relieved from liability and discharged herefrom.

W. BOND,
Referee, Industrial Accident Commission.

Dated at Los Angeles, California, Aug. 25, 1941.

(Seal of Industrial Accident Commission, State of California.)

WB:EA
LA 53-435

Board's Exhibit No. 2-H—(Continued.)

(Exhibit C)

Before the Industrial Accident Commission of the State of California

Claim No. L. A. 53-671

Filed August 26, 1941.

ABE GOREN,

Applicant,

vs.

HEARST PUBLICATIONS, INC., a corporation, and PACIFIC EMPLOYERS INSURANCE COMPANY, a corporation,

Defendants.

FINDINGS AND AWARD

F. B. McConnell, attorney for Pacific Employers Ins. Co.

A. Lawrence Mitchell, attorney for employer.

An application for adjustment of claim for compensation having been filed herein, and all parties having appeared, and the matter having been regularly submitted for decision, W. Bond, Referee, makes his Findings and Award as follows:

FINDINGS OF FACT

Abe Goren, applicant, occupation news vendor, sustained an injury on February 28, 1941, when he was struck by an automobile at Los Angeles, California.

Board's Exhibit No. 2-H—(Continued.)

2. On said date defendant Hearst Publications, Inc., a corporation, was insured under the compensation laws by Pacific Employers Insurance Company, a corporation.

3. The evidence does not establish that said applicant was on said date an employee of the defendant Hearst Publications, Inc., a corporation, or an employee at all, but that on said date said employee was an independent contractor and that the title to the newspapers sold by him actually passed from said defendant Hearst Publications, Inc. a corporation, to said applicant within the meaning of Section 352-c of the Labor Code.

AWARD

Now, Therefore, It Is Ordered that applicant take nothing by reason of the claim asserted and that said defendants be relieved from liability and discharged herefrom.

W. BOND,
Referee, Industrial Accident Commission.

Dated at Los Angeles, California, Aug. 26, 1941.

WB:EA
L. A. 53-671

(Seal of Industrial Accident Commission, State of California.)

(Duly verified)

BOARD'S EXHIBIT No. 4

[Title of Board and Causes.]

Case No. XXI-C-1840

STIPULATION

1. The correct designation of the publisher of "Los Angeles Evening Herald & Express" is and has been since prior to January 1, 1931, "Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department)." Accordingly, in all formal papers of whatsoever nature filed or admitted in evidence in these proceedings and also in all such papers which may hereafter be made a part of the record of these proceedings, wherever necessary, the designation of said publisher shall be deemed corrected to read "Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department)."

2. There has been no material change in the conduct of the business of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), hereinafter called "Respondent" since the admission in evidence of "Board's Exhibits Nos. 2 and 2a" on June 11, 1940, in the consolidated hearing held in the cases entitled "Matter of Stockholders Publishing Company, Inc. et al., Cases R-1923 to R-1926, inclusive," involving the Respondent herein.

3. If all witnesses called by the Union, the Board or Respondent at the hearing at Los Angeles, California from June 10, 1940 to June 27, 1940, were called to testify in this proceeding at this time their

testimony would be substantially the same as the testimony given at said hearing of June 10th to June 27th, 1940; provided, however, that nothing herein contained shall be deemed to constitute an admission by Respondent that said testimony was sufficient, or would now be sufficient, to support a finding of fact or conclusion of law that the members of said Union, or any of them, were or are, in so far as their news vending activities are concerned, employees of Respondent, nor shall anything herein contained be deemed to constitute a waiver by Respondent (1) of the right to contend that the evidence taken at said hearing on June 10th to 27th, 1940, was insufficient to show that all or any of the members of Los Angeles Newsboys Industrial Union No. 75, C.I.O., or all or any of the persons within the unit held by the Board to be appropriate, were employees of Respondent; or (2) of the right to contend, on all or any of the grounds urged before, at, or after said previous hearing that the Board has no jurisdiction over Respondent.

4. On or about August 12, 1941, Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., hereinafter called the "Union", by letter, requested a meeting with Respondent for the purpose of bargaining collectively with it under the Certification abovementioned. Said communication was received by Respondent but no written reply was made to it. Accordingly, on August 28, 1941, a charge against Respondent was filed by the Union and these proceedings were thereby initiated. Thereafter Res-

pondent was notified of the filing of said charges and in reply thereto counsel for Respondent, by letter dated September 19, 1941, sent to the local offices of the Board, admitted that it had been and was continuing to refuse to bargain with the Union under said Certification for the reason that it adhered to its position taken in Cases Nos. R-1923 to R-1926, inclusive. Accordingly there has been no bargaining between Respondent and the Union under said Certification.

5. It is further stipulated and agreed that Respondent, by entering into this stipulation does not admit, consent or agree that the said members of said Union are, or any of them is, in so far as newsvending activities are concerned, employees or an employee of the Respondent, within the purview of the National Labor Relations Act or otherwise, and said Respondent does not hereby consent to or subject itself to the jurisdiction of the National Labor Relations Board, nor does it waive any of the grounds of objection heretofore asserted and maintained by it in Case No. XXI-R-928, also numbered R-1924, formerly pending before the National Labor Relations Board, and asserted and maintained by it in this case numbered XXI-C-1840 in its "Answer" and in its "Motion to Dismiss", both heretofore filed herein.

Dated at Los Angeles, California, this 12th day of November, 1941.

JAMES A. COBEY
Counsel for the Board

FLINT & MACKAY
By /s/ EDWARD L. COMPTON
Attorneys for Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department)
LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.
By /s/ PAT COMORRE
Secy.

BOARD'S EXHIBIT No. 5

[Title of Board and Causes.]

Case No. XXI-C-1843

AGREED STATEMENT OF FACTS

For the purpose of this proceeding, and none other, it is hereby agreed that the facts hereinafter recited may be received in evidence in the above entitled proceeding as an Agreed Statement of Facts.

1. The Los Angeles Times is published by The Times-Mirror Company and has been published by said company since prior to January 1, 1939. Accordingly, in all documents filed, offered or received in evidence in this proceeding, and in all documents which may hereafter be made a part of the record of this proceeding, the designation of the publisher of the Los Angeles Times shall, when necessary, be deemed corrected to read "The Times-Mirror Company."

2. The business conducted by The Times-Mirror Company at the present time is substantially the same as that conducted by it in June, 1940, with respect to the matters appearing in the Agreed Statement of Facts admitted into evidence as "Board's Exhibit No. 14" on June 20, 1940, in the consolidated hearing held in the cases entitled "Matter of Stockholders Publishing Company, Inc., et al."—Cases XXI-R-927, XXI-R-928, XXI-R-1062 and XXI-R-1084—(sometimes designed Cases Nos. R-1923 to R-1926, inclusive).

3. The methods employed in street distribution and sale of the Los Angeles Times are substantially the same at present as they were at the time of the aforesaid hearing; this stipulation shall not be construed to be an admission by The Times-Mirror Company of the legal sufficiency of the evidence introduced at the aforesaid hearing to justify a finding or conclusion of law that the relationship of employer and employee then existed or now exists between The Times-Mirror Company and any news vendors then or now engaged in the sale of the Los Angeles Times.

4. On or about August 26, 1941, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., by registered letter requested a meeting with The Times-Mirror Company for the purpose of bargaining collectively with it. Subsequent to the receipt of said letter, and on September 3, 1941, the attorney for The Times-Mirror Company attended a meeting at the local offices of the Labor Board and orally advised Mr. William R. Walsh, Regional Di-

rector for the National Labor Relations Board, that The Times-Mirror Company would not presently bargain with the union, as requested, because by doing so it might preclude its right to challenge the jurisdiction of the Labor Board over The Times-Mirror Company with respect to its relations with news vendors selling the Los Angeles Times, or its right to have adjudicated by court decision its contention that none of the news vendors selling the Los Angeles Times were, at the time of the aforesaid hearing, or are now, employees of The Times-Mirror Company. At this meeting representatives of the union were present, and it was stipulated by all present that this statement of counsel for The Times-Mirror Company would be accepted as a reply to the union's letter of August 26, 1941. For these reasons there has been no collective bargaining between The Times-Mirror Company and said union.

The execution of this stipulation by counsel for The Times-Mirror Company shall in no manner constitute an admission by said company that National Labor Relations Board has jurisdiction over it in so far as this proceeding or said proceeding numbered XXI-R-1062 and/or R-1925 is concerned. Nor shall it be deemed as acquiescence in the correctness of the Board's rulings in respect to any phase of said proceeding XXI-R-1062 and or R-1925. It is specifically agreed by all parties that the "Motion to Dismiss" and "Answer of The Times-Mirror Company" on file herein, and all

other pleadings and documents heretofore filed by it in Case No. XXI-R-1062 and/or R-1925, are in no manner prejudiced or waived by the execution of this stipulation.

Dated at Los Angeles, California, this 12th day of November, 1941.

/s/ WM. R. WALSH
Regional Director Twenty-first Region National Labor Relations Board.

/s/ JAMES A. COBEY
Attorney National Labor Relations Board

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.,

By /s/ PAT COMORRE
Secretary

COSGROVE & O'NEIL
T. B. COSGROVE,
F. B. YOAKUM, JR.,

By /s/ F. B. YOAKUM, JR.
Attorneys for The Times-Mirror Company

[Title of Board and Causes.]

Case No. XXI-C-1840[1]
Case No. XXI-C-1843

INTERMEDIATE REPORT

Statement of the Case

Upon charges duly filed[2] by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaints, dated October 25, 1941, against the Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and The Times-Mirror Company, herein called the respondents, (sometimes called the Herald and the Times), alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaints accompanied by notice of hearing were duly served upon the respondents and the Union.

---

[1]Cases Nos. XXI-C-1840 and XXI-C-1843 were consolidated by order of the National Labor Relations Board, dated October 23, 1941.

[2]Charges against Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) were filed on August 28, 1941, and against The Times-Mirror Company on September 3, 1941.

Concerning the unfair labor practices, the complaints alleged in substance: (1) that on or about August 12, 1941, and thereafter, the Herald and on or about September 3, 1941, and thereafter, the Times refused to bargain collectively with the Union as the exclusive representative of their employees within appropriate bargaining units, although the Union represented a majority of such employees and (2) that by such refusals the respondents interfered with, restrained and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act.

On November 4 and November 7 respectively, the Times and the Herald filed their answers, admitting certain allegations of the complaints, but denying the commission of the alleged unfair labor practices and interposing certain affirmative defenses.

Pursuant to notice, a hearing was held in Los Angeles, California, on November 10 and 12, 1941, before the undersigned, the Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondents were represented by counsel and the Union by its representative. All the parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

On November 4, 1941, the Times filed a written motion with the Regional Director, to dismiss the complaint on the grounds that the Board was without jurisdiction in the premises and that neither

the members of the Union nor other persons alleged in the complaint as comprising the unit appropriate for the purposes of collective bargaining were employees of the Times. A similar motion was filed by the Herald on November 7, 1941. The Regional Director did not rule upon these motions, which were renewed at the hearing. Both of these motions were denied by the undersigned.

At the conclusion of the hearing, counsel for the Board moved to amend the pleadings to conform to the proof, in respect to formal matters such as names, dates and minor inaccuracies. The motion was granted by the undersigned. At the conclusion of the hearing, the parties were afforded, but waived, the opportunity to argue orally before the undersigned. The parties were also given the opportunity to file briefs with the undersigned; however, no briefs were filed.

Upon stipulation entered into by the parties, subsequent to the closing of the hearing, the undersigned, on November 21, 1941, issued an order for corrections in the transcript of testimony in this proceeding, which is hereby made part of the record in the case. Upon the record thus made and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

Findings of Fact

I. The business of the respondents[3]

A. Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department)

Hearst Publications, Incorporated, is a California corporation with its principal office and place of business in San Francisco, California. It is engaged in the publication of various daily and Sunday newspapers, including the Los Angeles Evening Herald & Express.[4]

The Herald is an evening newspaper published daily, except Sunday, at its plant in Los Angeles, California,[5] and distributed throughout the State of

---

[3]The facts related in this section are set forth in the "Decision and Direction of Election" issued by the Board on January 9, 1941, in cases R-1923 to 1926, inclusive, entitled "Matter of Stockholders Publishing Company et al" which was introduced in evidence (28 N.L.R.B. No. 151). During the instant hearing, it was stipulated by the respondents that there had been no material change in the conduct of their respective businesses since the consolidated hearing at Los Angeles, California, on June 10, 1940, before a Trial Examiner. (Cases XXI-R-927-928 and XXI-R-1062 and XXI-R-1084, sometimes designated Cases Nos. R-1923 to 1926, inclusive).

[4]In addition to the Herald, Hearst Publications, Incorporated, operates five other newspapers—(Los Angeles Examiner, San Francisco Examiner, San Francisco Call-Bulletin, Oakland Post-Examiner, and Seattle Post-Intelligencer).

[5]This plant is devoted exclusively to the publication and distribution of the Herald and is operated independently of other newspapers published by Hearst Publications, Incorporated.

California, principally in the metropolitan area of Los Angeles. Its average daily circulation exceeds 240,000 copies, of which approximately .37 of one per cent is sold and distributed outside the State of California.

The principal raw materials used in the printing of the Herald include mats and ink. During the year 1939, all the newsprint, consisting of about 18,915 tons, was obtained from the States of Washington and Oregon and the Dominion of Canada. During the same period, all the mats, numbering about 60,700, were obtained from the State of New York. The ink used, amounting to approximately 664,000 pounds, was manufactured in the State of California.

The Herald uses the wire reports of the International News Service, the Associated Press, the United Press, and the Dow-Jones Financial Service. The Herald supplies at least one wire service engaged in the interstate transmission of news with local news which the Herald has collected. During the year 1939, an average of 39 per cent of the space in the Herald was devoted to advertising, 16 per cent of which originated outside of California.

B. The Times-Mirror Company

The Times-Mirror Company is a California corporation, having its principal office and place of business in Los Angeles, California. It is engaged in the publication, distribution, and sale of "The Los Angeles Times," a morning newspaper, published

daily including Sunday, at its plant in Los Angeles. During the year 1939, the Times had an average daily circulation of approximately 220,000 copies and a Sunday circulation of approximately 367,800 copies. The Times is distributed throughout California, principally in the metropolitan area of Los Angeles. Approximately 1.7 per cent or about 3900 copies of the average daily editions in 1939 were sold outside the State of California. During the same period approximately 2.5 per cent or about 9000 copies of the Sunday edition were sold outside the State of California.

The principal raw materials used in printing the Times include news print, mats, and ink. During the year 1939, all the newsprint having a value of approximately $2,086,000 was purchased outside the State of California. The ink used, having a value of approximately $99,475, was purchased in California.

The Times uses the wire reports of the Associated Press, the United Press, and Dow-Jones Financial News Service. In addition it receives wire service from the Chicago Tribune and the New York News, and obtains photographs from Wide World Photos and the Associated Press. The Times supplies news gathered and assembled by it to the Associated Press. During 1939 the Times received from national syndicates and published at least 10 feature services, among the more prominent being those of Walter Lippman, Westbrook Pegler and American Institute of Public Opinion (Gallup Poll). During 1939, an average of 39.9 per cent of the space in the

Times was devoted to advertising, 14.1 per cent of which contained national advertising.

II. The organization involved

Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. is a labor organization chartered by the Congress of Industrial Organizations admitting to membership employees of the respondents.

III. The unfair labor practices

A. The refusal to bargain collectively

1. The appropriate unit

The complaints alleged, the Board found in its Decision and Direction of Elections dated January 9, 1941,[6] and the undersigned finds that (a) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys and (b) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, constitute units appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and the undersigned further finds that the aforesaid employees, at all times material herein constituted and now constitute units appropriate for the purposes of collective bargain-

[6] 28 N.L.R.B., No. 151.

ing and that such units will insure to employees of the respondents the full benefit of their right to self-organization, and to collective bargaining and otherwise effectuate the policies of the Act.

2. Representation by the Union of a majority in the appropriate units

Pursuant to the Board's Decision and Direction of Elections, dated January 9, 1941,[7] separate elections by secret ballot were conducted under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California) on May 14, 1941, among the employees of the Herald and on May 15, 1941, among the employees of the Times. As a result of these elections, the Board issued its Supplemental Decision and Certification of Representatives dated July 30, 1941,[8] in which it certified that the Union had been designated and selected by a majority of all employees within the aforesaid appropriate units, and pursuant to the provisions of Section 9 (a) of the Act, the Union was the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

The undersigned finds that on and at all times after July 30, 1941, in respect to both the Herald and the Times, the Union was the duly designated bargaining representative of a majority of the em-

[7] 28 N.L.R.B., No. 151.

[8] 33 N.L.R.B., No. 168.

ployees in the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times and is now the exclusive representative of all the employees in the aforesaid units for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

3. The refusal to bargain

The complaints alleged and the respondents admitted in their respective answers, that on or about August 12, 1941, and thereafter, in respect to the Herald and on or about September 3, 1941, and thereafter in respect to the Times, the respondents refused to bargain collectively with the Union within the meaning of Section 8 (5) of the Act. The aforesaid answers alleged that such refusals to bargain were based upon advice of competent counsel and in the bona fide belief that the Board had no jurisdiction over the respondents, in respect to their relationship with their news vendors, as they were independent contractors and not employees. The respondents denied in their answers that they were engaged in interstate commerce within the meaning of the Act. The undersigned finds that these contentions of the respondents are without merit.

In its Decision and Direction of Elections, dated January 9, 1941, cases Nos. R-1923 to 1926, inclusive,[2] based upon the record of the hearing held at Los Angeles, California, from June 10 to 27, 1940,

[2] 28 N.L.R.B., No. 151.

by a Trial Examiner duly designated by the Board,[10] the Board held that the respondents were engaged in interstate commerce within the meaning of Section 2 (6) of the Act, and that the employees of the respondents within the aforesaid appropriate units were employees within the meaning of Section 2 (3) of the Act.[11]

The respondents did not call any witnesses or introduce any relevant documentary evidence at the instant hearing.[12]

---

[10]Matter of Stockholders Publishing Company et al, cases XXI-R-927, XXI-R-928, XXI-R-1026 and XXI-R-1084 (sometimes designated cases Nos. R-1923 to R-1926, inclusive).

[11]During the instant hearing, counsel for the Herald stipulated that "if all witnesses called by the Union, the Board or the respondent at the hearing at Los Angeles, California, from June 10, 1940, to June 27, 1940, were called to testify in this proceeding at this time their testimony would be substantially the same as the testimony given at said hearing of June 10th to June 27th, 1940; . . ."

Counsel for the Times stipulated that "the methods employed in street distribution and sale of the Los Angeles Times are substantially the same at present as they were at the time of the aforesaid hearing . . . " (June 10 to 27, 1940)

[12]During the course of the instant hearing, counsel for the Times offered in evidence transcripts of the proceedings in the Matter of Pendergast v. The Times-Mirror Company et al before the Industrial Accident Commission of California, dated December 5, 1939, and February 21, 1940, respectively, together with the findings of the Commission, dated August 9, 1941. Also similar transcripts in re Ike Reich v. The Times-Mirror Company et al, dated

The undersigned finds that the respondents on August 12, 1941, in respect to the Herald and on September 3, 1941, in respect to the Times, and at all times thereafter, have refused to bargain collectively with the Union as the exclusive representative of their employees in appropriate units and have thereby interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondents, set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

March 27, 1941, and May 14, 1941, respectively, together with the findings of the Commission, dated August 25, 1941. Also the findings of the Commission in re Abe Goren v. Hearst Publications, Inc. Company, dated August 26, 1941. These documents were rejected by the undersigned. They were marked "Rejected Documents" and placed with the other records in the case.

The findings of the Commission dated August 9, 1941, in the Peindergast case were brought to the attention of the Board in a supplemental brief filed with the Board by counsel for the Times prior to the issuance of the Board's Decision and Direction of Elections, dated January 9, 1941, (28 N.L.R.B., No. 151).

V. The remedy.

Since it has been found that the respondents have engaged in unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action, designed to effectuate the policies of the Act.

It has been found that the respondents have refused to bargain collectively with the Union as its representative of a majority of the employees in appropriate units. It will therefore be recommended that the respondents bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. The following employees of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and The Times-Mirror Company, both of Los Angeles, California, at all times material herein, constituted and now constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: (a) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-

time newsboys and (b) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys.

3. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., has been at all times material herein the exclusive representative of all employees in the aforesaid units, (a) and (b), for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as exclusive representative of all their employees in the aforesaid appropriate units, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

6. The aforesaid ufair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in

the case, the undersigned recommends that the respondents, Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and The Times-Mirror Company, and their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of their employees who are (a) full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys and (b) newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75,

C.I.O., as the exclusive representative of their employees who are (a) full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys and (b) newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, in respect to rates of pay, wages, hours of employment and other conditions of employment;

(b) Post notices immediately in conspicuous places in their plants and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondents will not engage in the conduct from which it is recommended that they cease and desist in paragraphs 1 (a) and (b) of these recommendations and (2) that the respondents will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondents have taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply

with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended—any party may within thirty (30) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within twenty (20) days after the date of the order transferring the case to the Board.

/s/ W. P. WEBB,
Trial Examiner.

Dated: December 4, 1941.

[Title of Board and Causes.]

Case No. C-2024

(XXI-C-1843)

EXCEPTIONS OF THE TIMES-MIRROR COMPANY TO THE INTERMEDIATE REPORT AND OTHER PARTS OF THE RECORD AND PROCEEDING.

Comes now the Times-Mirror Company, respondent herein, and files this, its Exceptions to the Intermediate Report of the Trial Examiner, Honorable W. P. Webb, and to other parts of the record and proceeding (including rulings on motions and objections) and to findings, conclusions of law and rulings as hereinafter specified in Case No. R-1925 (XXI-R-1062).

The Intermediate Report is dated December 4, 1941, and this case was transferred to and continued before the Board pursuant to order of the Board dated December 6, 1941.

These Exceptions are filed pursuant to Article II, Section 33, of National Labor Relations Board Rules and Regulations—Series 2, as amended.

Exceptions to Intermediate Report:

1. To "Finding II", appearing on page 4 of the Intermediate Report, reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. is a labor organization chartered by the Congress of Industrial Organ-

izations admitting to membership employees of the respondents."*

2. To that portion of "Finding III(A)(1)", appearing on page 4 of the Intermediate Report, reading as follows:

> "* * * the undersigned finds that * * * (b) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, constitute units appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and the undersigned further finds that the aforesaid employees, at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining and that such units will insure to employees of the respondents the full benefit of their right to self-organization, and to collective bargaining and otherwise effectuate the policies of the Act."
>
> (p. 4, lines 41-54)

3. To that portion of "Finding III(A)(2)", ap-

---

* The excerpts from the Intermediate Report and also from the various rulings of the Board in the certification case, No. R-1925 (XXI-R-1062), in many instances contain plural nouns and verbs, occasioned by the consolidations ordered by the Board; the Board will understand that we here take exception to the portions indicated only so far as they refer to the respondent The Times-Mirror Company.

pearing on page 5 of the Intermediate Report, reading as follows:

"The undersigned finds that on and at all times after July 30, 1941, in respect to * * * the Times, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times and is now the exclusive representative of all the employees in the aforesaid units for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment."

(p. 5, lines 18-25)

4. To that portion of "Finding III(A)(3)" of the Trial Examiner, appearing on pages 5 and 6 of the Intermediate Report, reading as follows:

"The undersigned finds that these contentions of the respondents are without merit."*

(p. 5, lines 39-40)

"The undersigned finds that the respondents * * * on September 3, 1941, in respect to the Times, and at all times thereafter, have refused to bargain collectively with the Union as the exclusive representative of their employees in appropriate units and have thereby interfered with, restrained and coerced their employees in

*The contentions were that the newsboys were not employees and that the acts of the respondent with reference to the newsboys had no effect on commerce.

the exercise of the rights guaranteed in Section 7 of the Act."

(p. 6, lines 7-13)

5. To "Finding IV", appearing on page 6 of the Intermediate Report, reading as follows:

"The activities of the respondents, set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(p. 6, lines 18-23)

6. To "Finding V", appearing on page 7 of the Intermediate Report, reading as follows:

"Since it has been found that the respondents have engaged in unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

"It has been found that the respondents have refused to bargain collectively with the Union as the representative of a majority of the employees in appropriate units. It will therefore be recommended that the respondents bargain collectively with the Union."

7. To that portion of the "Conclusions of Law", appearing on page 7 of the Intermediate Report, reading as follows:

"1. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.

"2. The following employees of * * * The Times-Mirror Company, both of Los Angeles, California, at all times material herein, constituted and now constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: * * * (b) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys.

"3. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been at all times material herein the exclusive representative of all employees in the aforesaid units, * * * (b), for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

"4. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as exclusive representative of all their employees in the aforesaid appropriate units, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

"5. By interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging

in unfair labor practices within the meaning of Section 8 (1) of the Act.

"6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act."

8. To that portion of "Recommendations", appearing on page 8 of the Intermediate Report, reading as follows:

"1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of their employees who are * * * (b) newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys;

"(b) Engaging in any like or related acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

"2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

"(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of their employees who are * * * (b) newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, in respect to rates of pay, wages, hours of employment and other conditions of employment;

"(b) Post notices immediately in conspicuous places in their plants and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) days consecutive days from the date of posting, stating (1) that the respondents will not engage in the conduct from which it is recommended that they cease and desist in paragraphs 1 (a) and (b) of these recommendations and (2) that the respondents will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

"(c) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondents have taken to comply herewith.

"It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the

National Labor Relations Board issue an order requiring the respondents to take the action aforesaid."

(p. 8, lines 1-51)

Exceptions to Rulings of the Trial Examiner During the Course of the Hearing in This Case upon the Complaint and Answer:

1. To the ruling refusing to admit in evidence respondent's Exhibits 1, 2-A, 2-B, 3, 4-A and 4-B for identification [R. 41-46, 58].

2. To the denial of respondent's Motion to Dismiss Complaint (Board's Exhibit 2-G); the ruling appears in the Official Report of Proceedings (p. 73, lines 17-23).

Exceptions to Rulings in the Certification Case, Being Case No. R-1925 (XXI-R-1062):

1. To the denial by the Board of respondent's Motion to Dismiss Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act (Board's Exhibit 1-R in XXI-R-1062); the Board's ruling appears in its Decision and Direction of Elections, decided January 9, 1941 (28 NLRB No. 151).

2. To "Finding II" of the Board, appearing on page 6 of the Decision and Direction of Elections, reading as follows:

"Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in

the metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines, and periodicals, except those who have the power to hire and discharge."

3. To that portion of "Finding III" of the Board, appearing on page 16 of said Decision, reading as follows:

"Accordingly, we find that the newsboys involved in this proceeding are employees within the meaning of Section 2 (3) of the Act."

4. To that portion of "Finding IV" of the Board, appearing on page 16 of said Decision, reading as follows:

"We find that questions have arisen concerning the representation of employees of the Companies."

5. To "Finding V" of the Board, appearing on page 16 of said Decision, reading as follows:

"We find that the questions concerning representation which have arisen, occurring in connection with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

6. To that portion of "Finding VI" of the Board, appearing on pages 17 and 18 of said Decision, reading as follows:

"* * * we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: * * * (c) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys * * *. We further find that said units will insure to employees of the Companies the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act."

7. To that portion of "Finding VII" of the Board, appearing on page 18 of said Decision, reading as follows:

"At the hearing lists prepared by * * * the Times were introduced in evidence purporting to show the following approximate current number of newsboys employed * * * :

* * * * * * *

"Times . . . . . 627"

8. To the "Conclusions of Law", appearing on page 19 of said Decision, reading as follows:

"1. Questions affecting commerce have arisen concerning the representation of employees of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

"2. The following employees of * * * The Times-Mirror Company, * * * all of Los Angeles, California, constitute units appropriate for

the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: * * * (c) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys * * * ."

9. To that portion of the "Direction of Elections", appearing on pages 19 and 20 of said Decision, reading as follows:

"Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining, elections by secret ballot shall be conducted as early as possible * * * among the employees of the Companies within the groups described below who were employed by any of the Companies on the date of this Direction of Elections, including employees who did not work on said date because they were ill or on vacation, and employees who were then or shall have since been temporarily laid off, and excluding employees who shall have since quit or been discharged for cause:

* * * * *

"(c) All newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys * * * ."

10. To that portion of the Board's Order dated May 21, 1941, reading as follows:

> "It Is Hereby Ordered that the said 'Objections to Validity of Direction of Elections and Exceptions to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Times Unit)' be, and they hereby are, overruled."

11. To the "Report on Objections" of Regional Director William R. Walsh, dated June 12, 1941, and to each and all of the rulings of the Regional Director wherein he overruled the objections set forth in the "Objections to the Conduct of the Ballot and to the Election Report" filed by respondent with the Regional Director on June 6, 1941.

12. To those portions of the "Supplemental Decision and Certification of Representatives" rendered by the Board on July 30, 1941 (33 NLRB No. 168), reading as follows:

> "We hereby overrule in their entirety the Times' Objections to the Conduct of the Ballot and to the Election Report."
>
> (p. 5)
>
> * * * * *
>
> "It Is Hereby Certified that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of The Times-Mirror Company, Los Angeles, California, who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5

or more days a week, within Los Angeles and Glendale, California, excluding temporary newsboys, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment."

(p. 6)

Dated at Los Angeles, California, this 31st day of December, 1941.

THE TIMES-MIRROR COMPANY,

By Its Attorneys:

COSGROVE & O'NEIL,

T. B. COSGROVE,

F. B. YOAKUM, JR.,

By /s/ T. B. COSGROVE.

[Title of Board and Causes.]

Case No. C-2023

(XXI-C-1840)

EXCEPTIONS OF HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD AND EXPRESS DEPARTMENT) TO THE INTERMEDIATE REPORT AND OTHER PARTS OF THE RECORD AND PROCEEDING.

Comes now Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department), respondent herein, and files this, its Exceptions to the Intermediate Report of the Trial Examiner, Honorable W. P. Webb, and to other parts of the record and proceedings (including rulings on motions and objections) and to findings, conclusions of law and rulings as hereinafter specified in Case No. R-1924, also numbered XXI-R-928.

Said Intermediate Report is dated December 4, 1941, and the above entitled and numbered case was transferred to and continued before the Board pursuant to order of the Board dated December 6, 1941.

These Exceptions are filed pursuant to Article II, Section 33, of National Labor Relations Board Rules and Regulations, Series 2, as amended.

Exceptions to Intermediate Report dated December 4, 1941:

(1) To "Finding II. The organization involved", appearing on page 4 of the Intermediate Report, reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. is a labor organization chartered by the Congress of Industrial Organizations admitting to membership employees of the respondents."
>
> (p. 4, lines 30-33)

(2) To that portion of Finding contained in Section 1, entitled "The appropriate unit", of subparagraph A of paragraph III, appearing on page 4 of said Intermediate Report, reading as follows:

> "* * * the undersigned finds that (a) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys * * * constitute units appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and the undersigned further finds that the aforesaid employees, at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining and that such units will insure to employees of the respondents the full benefit of their right to self-organization,

and to collective bargaining and otherwise effectuate the policies of the Act."

(p. 4, lines 41 to 55)

(3) To that portion of Finding contained in Section 2, entitled "Representation by the Union of a majority in the appropriate units", of subparagraph A of paragraph III, appearing on page 5 of said Intermediate Report, reading as follows:

"* * * The undersigned finds that on and at all times after July 30, 1941, in respect to * * * the Herald * * * the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times and is now the exclusive representative of all the employees in the aforesaid units for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment."

(p. 5, lines 18 to 25)

(4) To those portions of Finding contained in Section 3, entitled "The refusal to bargain", of subparagraph A of paragraph III, appearing on pages 5 and 6 of said Intermediate Report, reading as follows:

"* * * The undersigned finds that these contentions of the respondents are without merit."

(p. 5, lines 39 and 40)

"* * * The respondents did not * * * intro-

duce any relevant documentary evidence at the instant hearing * * * The undersigned finds that the respondents on August 12, 1941, in respect to the Herald * * * and at all times thereafter, have refused to bargain collectively with the Union as the exclusive representative of their employees in appropriate units and have thereby interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act."

(p. 6, lines 3 to 13)

(5) To Finding IV, entitled "The effect of the unfair labor practices upon commerce", appearing on page 6 of said Intermediate Report, reading as follows:

"The activities of the respondents, set forth in Section KKK above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(p. 6, lines 18 to 23)

(6) To Finding V, entitled "The remedy", appearing on page 7 of the Intermediate Report, and reading as follows:

"Since it has been found that the respondents have engaged in unfair labor practices, it will be recommended that they cease and desist

therefrom, and take certain affirmative action, designed to effectuate the policies of the Act.

"It has been found that the respondents have refused to bargain collectively with the Union as the representative of a majority of the employees in appropriate units. It will therefore be recommended that the respondents bargain collectively with the Union."

(p. 7, lines 3 to 11)

(7) To that portion of the "Conclusions of Law" appearing on page 7 of said Intermediate Report, reading as follows:

"* * * The following employees of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) * * * of Los Angeles, California, at all times material herein, constituted and now constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: (a) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys * * * "

3. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., has been at all times material herein the exclusive representative of all employees in the aforesaid units, (a) and (b), for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with

Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as exclusive representative of all their employees in the aforesaid appropriate units, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act."

(p. 7, lines 21 to 51)

(8) To those portions of "Recommendations" appearing on page 8 of said Intermediate Report, reading as follows:

"1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of their employees who are (a) full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys * * * .

(b) Engaging in any like or related acts or conduct interfering with, restraining or co-

ercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive representative of their employees who are (a) full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys * * * in respect to rates of pay, wages, hours of employment and other conditions of employment;

(b) Post notices immediately in conspicuous places in their plants and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondents will not engage in the conduct from which it is recommended that they cease and desist in paragraphs 1 (a) and (b) of these recommendations and (2) that the respondents will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondents have taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid."

(p. 8, lines 1 to 51)

Exceptions to Rulings of the Trial Examiner During Course of the Hearing in This Case upon the Complaint, the Respondent's Motion to Dismiss and the Answer:

(1) To the ruling refusing to admit in evidence Exhibits 1, 2-A, 2-B, 3, 4-A and 4-B for identification (Official Report of Proceedings, p. 63, line 17 to page 65, line 20).

(2) To the denial of respondent's Motion to Dismiss Complaint (Board's Exhibit 1-G); the ruling appears in the Official Report of Proceedings (p. 73, lines 17 to 21).

Exceptions to Rulings in the Case Instituted for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act, Being Case No. R-1924, also numbered XXI-R-928.

(1) To the denial by the Board of respondent's "Motion to Dismiss Amended Petition for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act" (Board's Exhibit 1-CC) in Case No. R-1924, also numbered XXI-R-928; the Board's ruling appears in its Decision and Direction of Elections, decided January 9, 1941 (28 NLRB No. 151).

2. To Finding II, entitled "The organization involved" of the Board, appearing on page 6 of the said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in the metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines, and periodicals, except those who have the power to hire and discharge."

(3) To that portion of Finding III, entitled "Status of the newsboys involved in this proceeding", appearing on page 16 of said Decision, reading as follows:

> "Accordingly, we find that the newsboys involved in this proceedings are employees within the meaning of Section 2 (3) of the Act."

(4) To that portion of Finding IV, entitled "The question concerning representation", appear-

ing on page 16 of said Decision, reading as follows:

> "We find that questions have arisen concerning the representation of employees of the Companies."

(5) To Finding V, entitled "The effect of the questions concerning representation upon commerce", appearing on page 16 of said Decision, reading as follows:

> "We find that the questions concerning representation which have arisen, occurring in connection with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(6) To that portion of Finding VI, entitled "The appropriate units", appearing on pages 17 and 18 of said Decision and Direction of Elections, reading as follows:

> "* * * we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: * * * (b) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; * * * We further find that said units will insure to employees of the Companies the full benefit of their right to self-organization and to collec-

tive bargaining and otherwise effectuate the policies of the Act."

(7) To that portion of Finding VII, entitled "The determination of representatives", of the Board, appearing on page 18 of said Decision, reading as follows:

"At the hearing lists prepared by the Herald * * * were introduced in evidence purporting to show the following approximate current number of newsboys employed by each of these Companies:

Herald ---------- 219 * * * "

(8) To the "Conclusions of Law", appearing on page 19 of said Decision and Direction of Elections, reading as follows:

"1. Questions affecting commerce have arisen concerning the representation of employees of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The following employees * * * Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), * * * of Los Angeles, California, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: * * * (b) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; * * * "

(9) To that portion of the "Decision and Direction of Elections", appearing on pages 19 and 20 of said Decision, reading as follows:

"* * * Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining, elections by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction of Elections, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the employees of the Companies within the groups described below who were employed by any of the Companies on the date of this Direction of Elections, including employees who did not work on said date because they were ill or on vacation, and employees who were then or shall have since been temporarily laid off, and excluding employees who shall have since quit or been discharged for cause:

* * * * * * *

(b) All full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;"

(10) To that portion of the "Report on Objections", dated May 26, 1941, reading as follows:

> "The undersigned has considered the same (Objections to the Conduct of the Ballot and to the Election Report) and finds that the said objections raised no material issue with respect to the conduct of the ballot, but that the Objections concern matters which were of record before the Board, which the Board duly considered in issuing its Direction of Election."

(11) To that portion of "Supplemental Decision and Certification of Representatives", dated July 30, 1941, appearing on page 3 thereof, reading as follows:

> "On May 23, 1941, the Herald filed Objections to the Conduct of the Ballot and to the Election Report. On May 26, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued his Report on Objections. The Board has considered the Objections and the Regional Director's Report on Objections, and finds that the Objections raise no substantial or material issue with respect to the conduct of the election. The Objections are hereby overruled."

(12) To that portion of that certain "Supplemental Decision and Certification of Representatives", dated July 30, 1941, appearing on page 5 thereof, reading as follows:

> "It is hereby certified that Los Angeles Newsboys Local Industrial Union No. 75,

C.I.O., has been designated and selected by a majority of all employees of Hearst Publications, Incorporated, (Los Angeles Evening Herald & Express Department) Los Angeles, California, who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9(a) of the Act, Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment; * * *"

Dated at Los Angeles, California, this 2nd day of January, 1942.

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD AND EXPRESS DEPARTMENT)

By Its Attorneys:
FLINT & MacKAY,
H. S. MacKAY, JR.,
EDWARD L. COMPTON,
D. W. HAMBLIN,

By EDWARD L. COMPTON

[Title of Board and Cause.]

Case No. C-2023
Case No. C-2024

Room 442
Shoreham Building
Washington, D. C.

A hearing was held in the above matter for the purpose of Oral Argument at the above place January 22, 1942, at 10:30 a. m.

Before:

Harry A. Millis, Chairman.
William M. Leiserson, Member.

Appearances:

Eugene Thorrens, of Counsel to the Board.

For the Company:

T. B. Cosgrove (Times Mirror)
Rowan Building
Los Angeles, California

Harvey J. Kelly (Los Angeles Herald & Express Dept.)
H. Bar H. Ranch
Harrison, Idaho

[Title of Board and Cause.]

Case No. C-2023
Case No. C-2024

Mr. James A. Cobey, for the Board.

Flint & MacKay, by Mr. H. S. MacKay, Jr., Mr. Edward L. Compton, and Mr. D. H. Hamblin, of Los Angeles, Calif., and Mr. Harvey J. Kelly, of Harrison, Idaho, for the Herald.

Cosgrove & O'Neil, by Mr. T. B. Cosgrove and Mr. F. B. Yoakum, Jr., of Los Angeles, Calif., for the Times.

Mr. Patrick Comorre, of Los Angeles, Calif., for the Union.

Mr. Eugene R. Thorrens, of counsel to the Board.

DECISION AND ORDER

STATEMENT OF THE CASE

Upon charges duly filed[1] by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaints, dated October 25, 1941, against Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and the Times-Mirror Company, herein called the respondents, (sometimes called the Her-

[1] Charges against Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) were filed on August 28, 1941, and against the Times-Mirror Company on September 3, 1941.

ald and the Times, respectively), alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.[2] Copies of the complaints accompanied by notice of hearing were duly served upon the respondents and the Union.

Concerning the unfair labor practices, the complaints alleged in substance: (1) that on or about August 12, 1941, and thereafter, the Herald and, on or about September 3, 1941, and thereafter, the Times refused to bargain collectively with the Union as the exclusive representative of their employees within appropriate bargaining units, although the Union represented a majority of such employees and (2) that by such refusals the respondents interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

On November 4 and November 7, 1941, respectively, the Times and the Herald filed answers, admitting certain allegations of the complaints, but denying the commission of the alleged unfair labor

---

[2]By order entered on October 23, 1941, the Board, pursuant to Article II, Section 36 (b) of its Rules and Regulations—Series 2, as amended, had consolidated the cases for the purposes of the proceeding. In our present decision, as well as in the Board's decision in the representation proceedings hereinafter referred to, we have not considered evidence with respect to one publisher as applicable to any other publisher.

practices and interposing certain defenses hereinafter set forth.

Pursuant to notice, a hearing was held in Los Angeles, California, on November 10 and 12, 1941, before W. P. Webb, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondents were represented by counsel and the Union by its representative. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

On November 4, 1941, the Times had filed a written motion with the Regional Director, to dismiss the complaint on the ground that the Board was without jurisdiction since its operations did not affect interstate commerce and neither the members of the Union nor other persons alleged in the complaint as comprising the unit appropriate for the purposes of collective bargaining were employees of the Times. A similar motion had been filed with the Regional Director by the Herald on November 7, 1941. The Regional Director did not rule upon the motions, and the respondents renewed them at the hearing. The Trial Examiner denied the motions. At the conclusion of the hearing, counsel for the Board moved to amend the pleadings to conform to the proof with respect to formal matters such as names, dates, and minor inaccuracies, and the Trial Examiner granted the motion. During the course of the hearing the Trial Examiner made several rulings on other motions and on

objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. After the close of the hearing, the Trial Examiner entered an order, dated November 21, 1941, correcting errors in the transcript of the testimony and making the corrections a part of the record in accordance with a written stipulation entered into between all parties, dated November 21, 1941.

Thereafter the Trial Examiner issued and duly served upon the parties his Intermediate Report, dated December 4, 1941, finding that the respondents had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act, and recommending that the respondents cease and desist from their unfair labor practices and, upon request, bargain collectively with the Union. On January 5, 1942, the respondents filed exceptions to the Intermediate Report and briefs in support of the exceptions. Pursuant to notice duly served on all parties, a hearing for the purpose of oral argument was held before the Board in Washington, D. C., on January 22, 1942. The respondents were represented by counsel and participated in the argument. The Union did not appear.

The Board has considered the exceptions to the Intermediate Report and the briefs submitted by the parties and, insofar as they are inconsistent with the findings of fact, conclusions of law, and

order set forth below, finds the exceptions to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondents[3]

A. Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department)

Hearst Publications, Incorporated, is a California corporation with its principal office and place of business in San Francisco, California. It is engaged in the publication of various daily and Sunday newspapers, including the Los Angeles Evening Herald & Express.[4]

---

[3]The facts related in this action are taken from the Board's Decision and Direction of Elections, dated January 9, 1941, in Matter of Stockholders Publishing Company and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., et al., 28 N.L.R.B., No. 151, a representation proceeding, which, as hereinafter set forth, involved the respondents herein. In the present proceeding it was stipulated by all parties that the business of the respective respondents has continued without substantial change from that conducted by them at the time of the hearing in the aforementioned representation proceeding.

[4]In addition to the Herald, Hearst Publications, Incorporated, operates five other newspapers (Los Angeles Examiner, San Francisco Examiner, San Francisco Call-Bulletin, Oakland Post-Enquirer, and Seattle Post-Intelligencer) and owns stock in the following subsidiaries: (1) American Weekly, Inc., a New York Corporation which publishes

The Herald is an evening paper published daily except Sunday at its plant in Los Angeles[5] and dis-

"The American Weekly," a Sunday magazine and comic section which is a supplement and part of various Sunday newspapers published in cities throughout the United States; (2) Illinois Publishing and Printing Company, an Illinois corporation, which publishes the "Chicago Herald-American"; (3) Pitt Publishing Company, a Pennsylvania corporation, which publishes the "Pittsburgh Sun-Telegram" and operates through its subsidiary WCAE, Incorporated, radio station WCAE; and (4) The Times Publishing Company, a Michigan corporation, which publishes "Detroit Times." Hearst Publications, Incorporated, is a wholly owned subsidiary of Hearst Consolidated Publications, Inc., a Delaware corporation, all of the common stock of which is owned by The Hearst Corporation, a Delaware corporation, a wholly owned subsidiary of American Newspapers, Inc., a Delaware corporation. Clarence J. Shearn, as voting trustee, holds the legal title to all the common stock of American Newspapers, Inc., for the benefit of William Randolph Hearst. Hearst Consolidated Publications, Inc., The Hearst Corporation, and American Newspapers, Inc., have various subsidiaries engaged in the publishing and other businesses in various parts of the United States. Cf. Matter of William Randolph Hearst, Hearst Publications, Inc., Hearst Consolidated Publications, Inc., Hearst Corporation, American Newspapers, Inc., and King Features Syndicate, Inc., and American Newspaper Guild, Seattle Chapter, 2 N.L.R.B. 530, enf'd as mod., National Labor Relations Board v. Hearst, 102 F. (2d) 658 (C.C.A. 9).

[5]This plant is exclusively devoted to the publication and distribution of the Herald and is operated independently of other papers published by Hearst Publications, Incorporated.

tributed throughout the State of California, principally in the metropolitan area of Los Angeles. Its daily circulation averages 243,022 copies, of which approximately 37 hundredths of 1 percent or 903 copies are sold and distributed outside the State of California.

The principal raw materials used in the printing of the Herald include newsprint, mats, and ink. During the year 1939, all the newsprint, consisting of 18,915 tons, was obtained from the States of Washington and Oregon and the Dominion of Canada. During the same period, all the mats, numbering 60,700, were obtained from the State of New York. The ink used, amounting to 664,408 pounds, was manufactured in the State of California.

The Herald uses the wire reports of the International News Service,[6] the Associated Press,[7] the United Press,[8] and the Dow-Jones Financial Serv-

---

[6]For a description of the business of International News Service, see Matter of William Randolph Hearst, et al. and American Newspaper Guild, Seattle Chapter, 2 N.L.R.B. 530 enf'd as mod., National Labor Relations Board v. Hearst, 102 F. (2d) 658 (C.C.A. 9).

[7]For a description of the Nation-wide business of the Associated Press, see Matter of The Associated Press and American Newspaper Guild, 1 N. L. R. B. 788, enf'd, National Labor Relations Board v. Associated Press, 85 F. (2d) 56 (C.C.A. 2), 301 U. S. 103.

[8]For a description of the business of the United Press, see Matter of United Press Association and American Newspaper Guild, 3 N.L.R.B. 344.

ice. It uses daily approximately 332,000 words received from these services. The Herald supplies local news to at least one wire service engaged in the interstate transmission of news. In 1939 the Herald received and published approximately 40 feature services, the material for many of which was prepared and originated in States other than the State of California.

During the year 1939, an average of 39 percent of the space in the Herald was devoted to advertising. Of this advertising space, 84 percent contained advertising originating in the State of California while the remainder, 16 percent, contained advertising originating outside the State of California.

B. The Times-Mirror Company

The Times-Mirror Company, a California corporation having its principal place of business in Los Angeles, California, is engaged in the publication, distribution, and sale of The Los Angeles Times, a morning newspaper published daily, including Sunday, at its plant in Los Angeles. During the year 1939 the Times had an average daily circulation of 220,266 copies and a Sunday circulation of 367,814 copies. It is distributed throughout the State of California, principally in the metropolitan area of Los Angeles. Of the average daily circulation, approximately 1.7 percent or 3,935 copies were sold during the year 1939 outside the State of California. Of the Sunday edition, approximately 2.5 percent or 9,197 copies were

sold during the same period outside the State of California.

The principal raw materials used in printing the Times include newsprint, mats, and ink. During the year 1939, all the newsprint, having a value of $2,086,870.12, was purchased outside the State of California. During the same period, all the mats, having a value of $6,909.00, were purchased outside the State of California. The ink used, having a value of $99,476.85, was purchased in the State of California.

The Times uses the wire reports of the Associated Press, the United Press, and Dow-Jones Financial News Service. In addition, it receives wire service from the Chicago Tribune and the New York News, and obtains photographs from Wide World Photos and the Associated Press. In 1939, The Times received from national syndicates and published at least 10 feature services, among the more prominent being Walter Lippman, Westbrook Pegler, and American Institute of Public Opinion (Gallup Poll).

During the year 1939, an average of 39.9 percent of the space in the Times was devoted to advertising. Of this advertising space, 14.1 percent contained national advertising.

II. The organization involved

Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization chartered by the Congress of Industrial Organizations, ad-

mitting to membership employees of the respondents.

III. The unfair labor practices

A. The refusal to bargain collectively

1. The appropriate units

The complaints allege that the following units are appropriate for the purposes of collective bargaining: (a) full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys and (b) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys. The respondents contend that such units are inappropriate because newsboys, having interests similar to those sought to be included in the units, are excluded. We considered that contention in the Board's Decision and Direction of Elections, dated January 9, 1941, and found it to be without merit.[9] The respondents introduced no new evidence bearing upon the appropriate units in the present proceedings.

We now find, in accordance with our previous determination as to the appropriate units,[10] as did

---

[9] Matter of Stockholders Publishing Company, Inc., et al. and Los Angeles Local Industrial Union No. 75, C.I.O., 28 N.L.R.B., No. 151.

[10] 28 N.L.R.B., No. 151.

the Trial Examiner, that (a) full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys and (b) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, constitute units appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. We further find that the aforesaid employees, at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining and that such units insure to employees of the respective respondents the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

2. Representation by the Union of a majority in the appropriate units

Pursuant to the Board's Decision and Direction of Elections, dated January 9, 1941,[1] separate elections by secret ballot were conducted under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California) on May 14, 1941, among newsboys of the Herald and on May 15, 1941, among newsboys of the Times. As a result of the elections, the Board

[1] 28 N.L.R.B., No. 151.

issued its Supplemental Decision and Certification of Representatives, dated July 30, 1941,[12] certifying that the Union had been designated and selected by a majority of all employees within the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. No evidence was introduced in the present proceedings to rebut the presumption arising from the certification that the Union is still such representative.

We find, as did the Trial Examiner, that on and at all times after July 30, 1941, with respect to the Herald and the Times, the Union was the duly designated bargaining representative of a majority of the employees in each of the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times and is now the exclusive representative of all employees in each of the aforesaid units for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

The complaints allege, and the respondents admit in their respective answers, that on or about August 12, 1941, and thereafter, with respect to the Herald, and on or about September 3, 1941, and

[12] 33 N.L.R.B., No. 168.

thereafter, with respect to the Times, the respondents refused to bargain collectively with the Union. The answers, however, assert that such refusals to bargain were based upon "advice of competent counsel and in the bona fide belief" that the Board had no jurisdiction over the respondents with respect to their relationship with the newsboys since they were independent contractors and not employees. The respondents denied in their answers that they were engaged in commerce within the meaning of the Act.

In its Decision and Direction of Elections, dated January 9, 1941,[13] based upon the record of the representation hearing held at Los Angeles, California, from June 10 to 27, 1940, the Board held that the respondents were engaged in commerce within the meaning of Section 2 (6) and (7) of the Act, and that the newsboys of the respondents within the aforesaid appropriate units were employees within the meaning of Section 2 (3) of the Act.[14] The re-

[13] 28 N.L.R.B., No. 151.

[14] During the hearing on the complaints, the Herald stipulated that "if all witnesses called by the Union, the Board, or the respondent at the hearing at Los Angeles, California, from June 10, 1940, to June 27, 1940, were called to testify in this proceeding at this time, their testimony would be substantially the same as the testimony given at said hearing of June 10th to June 27th, 1940; . . ."; and, the Times stipulated that "the methods employed in street distribution and sale of the Los Angeles Times are substantially the same at present as they were at the time of the aforesaid hearing . . ." June 10 to 27, 1940).

spondents did not call any witnesses or introduce any other relevant documentary evidence at the present hearing.[15] We have reexamined the evidence introduced at the representation hearing. Since we see no reason to depart from our prior determination, we hold that the newsboys are employees within the meaning of Section 2 (3) of the Act.

We find, as did the Trial Examiner, that the respondent Herald on August 12, 1941, and at all times thereafter and that the respondent Times on September 3, 1941, and at all times thereafter, has each refused to bargain collectively with the Union as the exclusive representative of its employees in appropriate units and has thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of each of the respondents, set forth in Section III above, occurring in connection with the operations of each of the respondents described in Section I above, have a close, intimate,

[15] The respondents offered in evidence, and the Trial Examiner rejected, transcripts of testimony in workmen's compensation proceedings, involving news vendors and publishers, and the findings of the Industrial Accident Commission of California in such proceedings. We hereby affirm the Trial Examiner's ruling.

and substantial relation to trade, traffic, and commerce among the several States and tend to lead to traffic disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Since we have found that the respondents have engaged in unfair labor practices, we will order that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We have found that the respondents have refused to bargain collectively with the Union as the representative of a majority of the employees in appropriate units. We will therefore order that the respondents, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the cases, the Board makes the following:

CONCLUSIONS OF LAW

1. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. The following employees of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) of Los Angeles, California, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Sec-

tion 9 (b) of the National Labor Relations Act: all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys.

3. The following employees of The Times Mirror Company of Los Angeles, California, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys.

4. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., has been at all times material herein and still is the exclusive representative of all employees in each of the aforesaid units for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with Los Angeles Newspaper Local Industrial Union No. 75, C. I. O., as the exclusive representative of all its employees in an appropriate unit, each of the respondents has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

6. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have

engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are full-time newsboys and checkmen, engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys.

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing;

and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Times-Mirror Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Upon request bargain collectively with

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, with respect to rates of pay, wages, hours or employment, and other conditions of employment;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 30 day of Mar., 1942.

[Seal] HARRY A. MILLIS
Chairman
WM. M. LEISERSON
Member

GERARD D. REILLY
Member
[Seal] NATIONAL LABOR RELATIONS BOARD

[Title of Board and Causes.]
Case No. C-2023
Case No. C-2024

AFFIDAVIT AS TO SERVICE

District of Columbia,—ss:

I, James B. Minor being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 30th day of March 1942, I mailed postpaid, bearing government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.
Att: Mr. Pat Comorre
212 West Third Street
Los Angeles, California—69101.
Hearst Publications, Inc.
1243 Trenton, Los Angeles, Calif.—69102.
Times Mirror Co.
202 W. First St., Los Angeles, Calif.—69103.
Flint & MacKay
1232 Rowan Bldg.
Los Angeles, Calif.—69104.

Cosgrove & O'Neil
1031 Rowan Bldg.
Los Angeles, Calif.—69105.
Harvey J. Kelly, Esq.
H Bar H Ranch
Harrison, Idaho—69106.

JAMES B. MINOR

Subscribed and sworn to before me this 30th day of March, 1942.

[Seal] KATHRYN B. HARRELL
Notary Public D. C.

My commission expires Mar. 1, 1947.

Form 3811 Rev. 1-4-40.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee)—
L. A. Newsboys Local Industrial Union No. 75, C. I. O.

2. (Signature of addressee's agent—Agent should enter addressee's name on line ONE above)—
Francis Comorre.

Date of delivery 4/1/1942.

Post Office Department
Official Business
Penalty for private use to avoid payment of postage, $300.

Postmark of delivering office.

Return to (Name of Sender)

Street and Number, or Post Office Box,
Registered Article No. 69101.
Insured Parcel.
Los Angeles, Calif., Apr. 1, 1942. 9 P.M.
Washington,
National Labor Relations Board.

Form 3811 Rev. 1-4-40.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee)—
Hearst Publications, Inc.

2. (Signature of addressee's agent—Agent should enter addressee's name on line ONE above)—
Charles Wallach.

Date of delivery Apr. 1, 1942.

Post Office Department
Official Business
Penalty for private use to avoid payment of postage, $300.

Postmark of delivering office.

Return to (Name of Sender)
Street and Number, or Post Office Box,
Registered Article No. 69102.
Insured Parcel.
Los Angeles, Calif., Apr. 1, 1942. 11 A.M.
Washington, D. C.
National Labor Relations Board.
Form 3811 Rev. 1-4-40.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee)—
Times-Mirror Co.

2. (Signature of addressee's agent—Agent should enter addressee's name on line ONE above)—
Frank Paul.

Date of delivery Apr. 1, 1942.

Post Office Department

Official Business

Penalty for private use to avoid payment of postage, $300.

Postmark of delivering office.

Return to (Name of Sender)

Street and Number, or Post Office Box.

Registered Article No. 69103.

Insured Parcel.

Los Angeles, Calif., Apr. 1, 1942. 9 P.M.

Washington, D. C.

National Labor Relations Board.

Form 3811 Rev. 1-4-40.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee)—
Flint & MacKay

2. (Signature of addressee's agent—Agent should enter addressee's name on line ONE above)—
L. Keller.

Date of delivery 4/1/1942.

Post Office Department

Official Business

Penalty for private use to avoid payment of postage, $300.

Postmark of delivering office.

Return to (Name of Sender)

Street and Number, or Post Office Box.

Registered Article No. 69104.

Insured Parcel.

Los Angeles, Calif., Apr. 1, 1942. 9 P.M.

Washington, D. C.

National Labor Relations Board.

Form 3811 Rev. 1-4-40.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee)—
Cosgrove & O'Neil

2. (Signature of addressee's agent—Agent should enter addressee's name on line ONE above)—
Louise Elmers.

Date of delivery 4/1/1942.

Post Office Department

Official Business

Penalty for private use to avoid payment of postage, $300.

Postmark of delivering office.
Return to (Name of Sender)
Street and Number, or Post Office Box,
Registered Article No. 69105.
Insured Parcel.
Los Angeles, Calif., Apr. 1, 1942. 9 P.M.
Washington, D. C.
National Labor Relations Board.

Form 3811 Rev. 1-4-40.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee)—
Harvy J. Kelly

2. (Signature of addressee's agent—Agent should enter addressee's name on line ONE above)—
Mrs. Harvy J. Kelly.

Date of delivery 4/4/1942.
Post Office Department
Official Business
Penalty for private use to avoid payment of postage, $300.
Postmark of delivering office.
Return to (Name of Sender)
Street and Number, or Post Office Box,
Registered Article No. 69106.
Insured Parcel.
Los Angeles, Calif., Apr. 4, 1942. 3 P.M.
Washington, D. C.
National Labor Relations Board.

BOARD EXHIBIT No. 1-A-1

[Title of Board and Cause.]

Case No. XXI-C-1956

COMPLAINT

It having been charged by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., chartered by the Congress of Industrial Organizations, that Hearst Publications, Incorporated (Los Angeles Examiner Department), hereinafter called "Respondent," has engaged in and is engaging in at Los Angeles, California, certain unfair labor practices affecting commerce as set forth and defined in National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter referred to as "Act," the National Labor Relations Board, by its Regional Director for its Twenty-first Region, designated as agent of said Board by Article IV, Section 1, subsection (c), and Article II, Section 5 of its Rules and Regulations, Series 2, as amended, hereby issues its Complaint and alleges the following:

Hearst Publications, Incorporated, is and, at all times hereinafter referred to, has been a corporation, organized and existing under and by virtue of the laws of the State of California. Said corporation has its principal office and place of business in San Francisco, California. It is engaged in the publication, distribution, and sale of various daily and Sunday newspapers including Los Angeles Examiner, hereinafter referred to as "Examiner."

2. The Examiner is a morning newspaper published daily, including Sunday, at its plant in Los

Angeles, California. Said paper is distributed throughout the State of California but principally in the metropolitan area of Los Angeles. In addition a substantial portion of its daily circulation is sold and distributed outside the State of California.

3. Respondent, in the conduct of its above-described business of publishing, selling, and distributing the Examiner, causes and continuously has caused large quantities of raw materials used in its business, including specifically but without limitation thereby, newsprint and mats to be transported into the State of California from other states of the United States and from foreign countries.

4. Respondent, in the conduct of its above-described business of publishing, selling, and distributing the Examiner, daily supplies news to and daily receives news from several well-known news services which gather and disseminate news nationally and internationally. Said Respondent in the conduct of this business likewise daily receives and publishes numerous feature services, the material for many of which is prepared and originates in states of the United States other than the State of California. Further, said Respondent in the conduct of this business daily publishes in substantial amounts advertising originating outside the State of California.

5. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., hereinafter called "Union" is a labor organization within the meaning of Section 2, subsection (5) of the Act.

6. A unit for the purposes of collective bargain-

ling, composed of all employees of Respondent who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, would insure to such employees of Respondent the full benefit of their right to self-organization and to collective bargaining and would otherwise effectuate the policies of the Act. Said unit is, therefore, appropriate for the purposes of collective bargaining between the representatives of such employees of Respondent and Respondent.

7. By May 15, 1941, or before that date, a majority of the employees of Respondent within the unit set forth in paragraph 6 had designated the Union as their representative for the purpose of bargaining collectively with Respondent with respect to their compensation, hours of employment and other conditions of employment. This majority status of the Union within this unit has continued up to and including the date of this Complaint.

8. Since on or about November 14, 1941, Respondent, while engaged in its above-described business at Los Angeles, California, has continuously failed and or refused and does now fail and or refuse to bargain collectively in good faith with the Union.

9. By this continuous failure and or refusal to bargain with the Union as set out in the immediately preceding paragraph, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of the Act.

10. The acts of Respondent set out in paragraph 8 occurring in connection with the operation of its business as described in paragraphs 1, 2, 3, and 4 have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

11. The acts of Respondent set out in paragraph 8 constitute unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on the 5th day of December, 1941, issues its Complaint against the Hearst Publications, Incorporated (Los Angeles Examiner Department), Respondent herein.

NOTICE OF HEARING

Please take notice that on the 15th day of December, 1941, in Room 808, U. S. Postoffice & Courthouse Building, Los Angeles, California, at 10:00 o'clock in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations—Series 2, as amended, Article IV and Article II, Section 23, on the allegations set forth in the Complaint hereinabove set forth, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twenty-first (21st) Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing Complaint, on or before the 15th day of December, 1941.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 2, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

Please take notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown directs that a given exhibit need not be duplicated.

In witness whereof, the National Labor Relations Board has caused this, its Complaint and its Notice of Hearing, to be signed by the Regional Director for the Twenty-first (21st) Region on the 5 day of December, 1941.

/s/ WM. R. WALSH
Regional Director, 21st Region
National Labor Relations Board
808 U. S. Portoffice & Courthouse Bldg.
Los Angeles, California

EXHIBIT No. 1-A-2

United States of America

Before the National Labor Relations Board
21st Region

Case No. XXI C 1956

Date filed 11/21, 1941

In the Matter of HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Hearst Publications, Incorporated (Los Angeles Examiner Department), 1111 S. Broadway, Los Angeles, California, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that said Company, through its officers and agents, has refused to recognize, deal with, and/or bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O, since on or about November 14, 1941, as the exclusive representative of those employees of said Company for which said Union was certified on October 20, 1941 as said exclusive bargaining representative by the National Labor Relations Board.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.
By PAT COMORRE,
Secretary.
212 W. 3rd St., Los Angeles, Calif.
(MU-5747)

Subscribed and sworn to before me this 21st day of November, 1941, at Los Angeles, Calif.

JAMES A. COBEY,
Attorney, National Labor Relations Board, 21st Region.

BOARD EXHIBIT No. 1-B

United States of America

National Labor Relations Board

I, Beatrice M. Stern, Executive Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

ORDER CONSOLIDATING CASES

In the matter of

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.—CASE NO. XXI-C-1956

STOCKHOLDERS PUBLISHING COMPANY, INC. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.—CASE No. XXI-C-1957.

In Witness Whereof, I have hereunto subscribed ... name and caused the seal of the National Labor Relations Board to be affixed this 6th day of December, A. D. 1941, at Washington, D. C.

[Seal] Executive Secretary.

[Title of Board and Causes.]

Case No. XXI-C-1956
Case No. XXI-C-1957

ORDER CONSOLIDATING CASES

Charges, pursuant to Section 10(b) of the Act, having been filed in the above-entitled cases, and the Board having duly considered the matter, and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act,

It Is Hereby Ordered, pursuant to Article II, Section 36(b), of National Labor Relations Board Rules and Regulations—Series 2, as amended, that these cases be, and they hereby are, consolidated.

Dated, Washington, D. C., December 3, 1941.

By direction of the Board:

[Seal] BEATRICE M. STERN,
Executive Secretary.

BOARD EXHIBIT No. 1-C

[Title of Board and Cause.]

Case No. XXI-C-1956

MOTION TO DISMISS COMPLAINT

Comes now Hearst Publications, Incorporated (Los Angeles Examiner Department), and appearing for itself alone, and appearing specially and not generally, and only for the purpose of this motion, moves to dismiss the complaint issued herein by the National Labor Relations Board through its Regional Director for the Twenty-first Region.

Said motion is made on each and all of the following grounds:

1. That the National Labor Relations Board has no jurisdiction over respondent.

2. That respondent is not engaged in commerce among the several states, or between the District of Columbia or any territory of the United States and any state or other territory or between any foreign

country or any state, territory or the District of Columbia or within the District of Columbia or any territory or between points in the same state or territory or any other state or territory or the District of Columbia or any foreign country, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

3. That no member of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. is an employee of respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

4. That the persons particularly referred to in paragraph 6 of the complaint, to wit, newsboys engaged in the street sale of the Los Angeles Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, are not employees of, nor is any one of them an employee of, this respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

5. That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., and the newsboys mentioned in the complaint, are engaged solely in intrastate commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

6. That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., and the newsboys referred to in the complaint, are not engaged in interstate commerce, or in any business

activities having a close, intimate, substantial or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

7. That no refusal of respondent to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. can burden or obstruct commerce, and such refusal can not and has not led or tended to lead, and can not and does not now, and will not, lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

8. That no cessation of the news vending activities of members of Los Angeles Newsboys Local Union No. 75, C. I. O., or of the newsboys referred to in the complaint, or any of them, can or will burden or obstruct commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

9. That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the newsboys referred to in the complaint, or any of them, can or will lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

10. That each and all of the newsboys referred

to in paragraph 6 of the complaint, to wit, newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, excluding temporary newsboys, is and are independent contractors.

11. That the National Labor Relations Board has no jurisdiction over the relations of this respondent with persons engaged in the independent business of vending the newspapers published by this respondent.

This motion is made by respondent in reliance upon the rights granted by Article II, Sections 14 to 18, inclusive, of Rules and Regulations, Series 2, as amended, of the National Labor Relations Board; and its right to make this motion, or to object to any ruling upon the same shall not be deemed waived by the filing of an answer or by other participation by this respondent in the proceedings before the Trial Examiner or the Board.

Dated: At Los Angeles, California, this 12th day of December, 1941.

LAWLER, FELIX & HALL,
A. LAURENCE MITCHELL,
By JOHN M. HALL,
Attorneys for Hearst Publications, Incorporated (Los Angeles Examiner Department).

BOARD EXHIBIT No. 1-D

[Title of Board and Cause]

Case No. XXI-C-1956.

ANSWER OF HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT)

Comes now Hearst Publications, Incorporated (Los Angeles Examiner Department), hereinafter called "respondent," and reserving all rights asserted in all pleadings and documents heretofore filed by it in Case No. XXI-R-1084, being also Case No. XXI-R-1926, and under its Motion to Dismiss Complaint filed concurrently herewith, files this its answer to the complaint issued herein by National Labor Relations Board through its Regional Director for the Twenty-first Region.

1. Admits the allegations of paragraph 1 of the complaint, but in this connection alleges that Los Angeles Examiner is published at its plant situated in Los Angeles, California, in which plant no other business is conducted, and that the publication, distribution and sale of Los Angeles Examiner is a separate business enterprise of Los Angeles Examiner Department of Hearst Publications, Incorporated, with which no other department of Hearst Publications, Incorporated, has any connection.

2. Answering paragraph 2 of the complaint, respondent denies that a considerable or any substantial portion of the daily or Sunday, or daily and Sunday, circulation of Los Angeles Examiner is sold

or distributed outside the State of California, and in this connection alleges that on the average not to exceed 2% of its daily (exclusive of Sunday) circulation and not to exceed 9% of its Sunday circulation is sold or distributed outside the State of California, and that none of the newsboys included within the Union referred to in the complaint, or the unit for purposes of collective bargaining referred to in the complaint, were or are engaged in any transaction or operation connected with or relating to the sale or distribution of said newspaper outside the State of California.

3. Answering paragraph 3 of the complaint, respondent admits that in the conduct of its business respondent uses large quantities of newsprint and mats; denies specifically each and every allegation of paragraph 3 of the complaint not in this paragraph specifically admitted.

4. Admits the allegations of paragraph 4 of said complaint.

5. Denies specifically the allegations of paragraph 5 of the complaint.

6. Denies specifically the allegations of paragraph 6 of said complaint.

7. Denies specifically the allegations of paragraph 7 of the complaint.

8. Admits the allegations of paragraph 8 of the complaint, but in explanation of this admission alleges that it has in good faith refused to bargain collectively with Los Angeles Local Industrial Un-

ion No. 75, C. I. O. upon the advice of competent counsel and in the bona fide belief that the National Labor Relations Board had and has no jurisdiction over respondent with respect to respondent's relationship with the newsboys referred to in the complaint, who are independent contractors and not employees.

9. Answering paragraph 9 of said complaint, respondent denies that by reason of continuous or any failure or refusal to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as alleged in paragraph 8 of the complaint respondent has engaged in or is engaging in an unfair labor practice, or unfair labor practices, within the meaning of Section 8, Subsection (1), or Section 8, Subsection (5) of the National Labor Relations Act.

10. Denies specifically the allegations of paragraph 10 of the complaint.

11. Denies specifically the allegations of paragraph 11 of said complaint.

For a Second, Separate and Further Defense and Answer, Respondent Alleges:

That the National Labor Relations Board has no jurisdiction over respondent.

For a Third, Separate and Further Defense and Answer, Respondent Alleges:

That respondent is not engaged in commerce among the several states, or between the District of Columbia or any territory of the United States and any state or other territory or between any foreign country or any state, territory or the District of

Columbia or within the District of Columbia or any territory or between points in the same state or territory or any other state or territory or the District of Columbia or any foreign country, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a Fourth, Separate and Further Defense and Answer, Respondent Alleges:

That no member of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. is an employee of respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a Fifth, Separate and Further Defense and Answer, Respondent Alleges:

That the persons particularly referred to in paragraph 6 of said complaint, to wit, newsboys engaged in the street sale of Los Angeles Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, are not employees of, nor is any one of them an employee of, this respondent, and therefore the National Labor Relations Board has no jurisdiction over respondent.

For a Sixth, Separate and Further Defense and Answer, Respondent Alleges:

That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. and the newsboys mentioned in the complaint, are engaged solely in intrastate commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a Seventh, Separate and Further Defense and Answer, Respondent Alleges:

That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., and the newsboys referred to in the complaint, are not engaged in interstate commerce, or in any business activity having a close, intimate, substantial or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For an Eighth, Separate and Further Defense and Answer, Respondent Alleges:

That no refusal or respondent to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. can burden or obstruct commerce, and such refusal cannot and has not led or tended to lead, and can not and does not now, and will not lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a Ninth, Separate and Further Defense and Answer, Respondent Alleges:

That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the newsboys referred to in the complaint, or any of them, can or will burden or obstruct commerce or the free flow of commerce, and, therefore, the National Labor Re-

lations Board has no jurisdiction over respondent.

For a Tenth, Separate and Further Defense and Answer, Respondent Alleges:

That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the newsboys referred to in the complaint, or any of them, can or will lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For an Eleventh, Separate and Further Defense and Answer, Respondent Alleges:

That each and all of the newsboys referred to in paragraph 6 of the complaint, to wit, newsboys engaged in the street sale of Los Angeles Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, is and are independent contractors.

For a Twelfth, Separate and Further Defense and Answer, Respondent Alleges:

That the National Labor Relations Board has no jurisdiction over the relations of this respondent with persons engaged in the independent business of vending the newspapers published by this respondent.

For a Thirteenth, Separate and Further Defense and Answer, Respondent Alleges:

That the Industrial Accident Commission of the State of California, in a decision rendered on August 26, 1941, has ruled that a newsboy (not a temporary newsboy) engaged in the street sale of Los Angeles Examiner at an established spot 4 or more hours a day, 5 or more days a week, within Los Angeles, California, is not an employee of respondent, but on the contrary, is an independent contractor. This decision is entitled: "Abe Goren, Applicant, vs. Hearst Publications, Inc., a corporation, and Pacific Employers Insurance Company, a corporation, Defendants." A copy of said decision is attached hereto, marked "Exhibit A" and made a part hereof.

Wherefore, respondent prays that the complaint herein be dismissed.

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT), a corporation, 1111 South Broadway, Los Angeles, California.

LAWLER, FELIX & HALL,
A. LAURENCE MITCHELL,
By JOHN M. HALL,
Attorneys for Hearst Publications, Incorporated (Los Angeles Examiner Department).

(Duly verified)

EXHIBIT "A".

Before the Industrial Accident Commission of the State of California

Claim No. L. A. 53-671

ABE GOREN,

Applicant,

vs

HEARST PUBLICATIONS, INC., a corporation, and PACIFIC EMPLOYERS INSURANCE COMPANY, a corporation,

Defendants.

FINDINGS AND AWARD.

Filed August 26, 1941.

F. B. McConnell, attorney for Pacific Employers Ins. Co.

A. Lawrence Mitchell, attorney for employer.

An application for adjustment of claim for compensation having been filed herein, and all parties having appeared, and the matter having been regularly submitted for decision, W. Bond, Referee, makes his Findings and Award as follows:

FINDINGS OF FACT.

Abe Goren, applicant, occupation news vendor, sustained an injury on February 28, 1941, when he was struck by an automobile at Los Angeles, California.

2. On said date said defendant Hearst Publications, Inc., a corporation, was insured under the compensation laws by Pacific Employers Insurance Company, a corporation.

3. The evidence does not establish that said applicant was on said date an employee of the defendant Hearst Publications, Inc., a corporation, or an employee at all, but that on said date said employee was an independent contractor and that the title to the newspapers sold by him actually passed from said defendant Hearst Publications, Inc., a corporation, to said applicant within the meaning of Section 352-c of the Labor Code.

AWARD

Now, Therefore, It Is Ordered that applicant take nothing by reason of the claim asserted and that said defendants be relieved from liability and discharged herefrom.

W. BOND,
Referee, Industrial Accident Commission.

Dated at Los Angeles, California, Aug. 26, 1941.
WB:EA
L A 53-671

BOARD'S EXHIBIT No. 2-A-1

[Title of Board and Cause.]

Case No. XXI-C-1957

COMPLAINT

It having been charged by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., chartered by the Congress of Industrial Organizations, that Stockholders Publishing Company, Inc., hereinafter called "Respondent," has engaged in and is engaging in at Los Angeles, California, certain unfair labor practices affecting commerce as set forth and defined in National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter referred to as "Act," the National Labor Relations Board, by its Regional Director for its Twenty-first Region, designated as agent of said Board by Article IV, Section 1, subsection (c), and Article II, Section 5 of its Rules and Regulations, Series 2, as amended, hereby issues its Complaint and alleges the following:

1. Respondent is and, at all times hereinafter referred to, has been a corporation organized and existing under and by virtue of the laws of the State of Nevada. Said Respondent has its principal office and place of business in Los Angeles, California. It is engaged in the publication, distribution, and sale of a daily (except Sunday) newspaper "The News" hereinafter referred to as "News".

2. The News is distributed principally in the metropolitan area of Los Angeles. However a considerable portion of its circulation is sold and distributed outside the State of California.

3. Respondent, in the operation of its above-described business, causes and continuously has caused large quantities of raw materials used in its business, including specifically but without limitation thereby, newsprint and mats to be transported into the State of California from other states of the United States and from foreign countries.

4. Respondent, in the operation of its above-described business, daily publishes in substantial quantites, news, feature services and advertising received from and/or originating outside the State of California.

5. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., hereinafter called "Union" is a labor organization within the meaning of Section 2; subsection (5) of the Act.

6. A unit for the purposes of collective bargaining composed of all employees of Respondent who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, would insure to such employees of Respondent the full benefit of their rights to self-organization and to collective bargaining and would otherwise effectuate the policies of the Act. Said unit is, therefore, appropriate for the purposes of

collective bargaining between the representatives of such employees and Respondent.

7. By May 14, 1941, or before that date, a majority of the employees of Respondent within the unit set forth in paragraph 6 had desginated the Union as their representative for the purpose of bargaining collectively with Respondent with respect to their compensation, hours of employment and other conditions of employment. This majority status of the Union within this unit has continued up to and including the date of this Complaint.

8. Since on or about August 27, 1941, Respondent, while engaged in its above-described business at Los Angeles, California, has continuously failed and/or refused and does now fail and/or refuse to bargain collectively in good faith with the Union.

9. By this continuous failure and/or refusal to bargain with the Union as set out in the immediately preceding paragraph, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (1) and (5) of the Act.

10. The acts of Respondent set out in paragraph 8 occurring in connection with the operation of its business as described in paragraphs 1, 2, 3, and 4 have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

11. The acts of Respondent set out in para-

graph 8 constitute unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on the 5th day of December, 1941, issues its Complaint against the Stockholders Publishing Company, Inc., Respondent herein.

NOTICE OF HEARING

Please take notice that on the 15th day of December, 1941, in Room 808, U. S. Postoffice & Courthouse Building, Los Angeles, California, at 10:00 o'clock in the forenoon a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations—Series 2, as amended, Article IV and Article II, Section 23, on the allegations set forth in the Complaint hereinabove set forth, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twenty-first (21st) Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing Complaint, on or before the 15th day of December, 1941.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 2, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is

particularly directed to Article II of said Rules and Regulations.

Please take notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown directs that a given exhibit need not be duplicated.

In witness whereof, the National Labor Relations Board has caused this, its Complaint and its Notice of Hearing, to be signed by the Regional Director for the Twenty-first (21st) Region on the 5 day of December, 1941.

WILLIAM R. WALSH
Regional Director, 21st Region
National Labor Relations Board, 808 U. S. Postoffice & Courthouse Bldg., Los Angeles, California.

BOARD EXHIBIT No. 2-A-2

United States of America
Before the National Labor Relations Board
21st Region

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC., and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.

Case No. XXI-C-1957
Dated filed 11/21, 1941

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Stockholders Publishing Company, Inc., 1257 S. Los Angeles St., Los Angeles, Cal. has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that said Company, through its officers and agents, has refused to recognize, deal with, and/or bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. since on or about August 27, 1941, as the exclusive representative of those employees of said Company for which said Union was certified on July 30, 1941 as said exclusive bargaining representative by the National Labor Relations Board.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization

making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.
By PAT COMORRE
Secretary
212 W. 3rd St.,
Los Angeles, Calif.
MUtual 5747

Subscribed and sworn to before me this 21 day of November, 1941. At Los Angeles, Calif.

JAMES A. COBEY,
Attorney National Labor Relations Board, 21st Region.

BOARD EXHIBIT No. 2-E

(Space below for filing stamp only.)

Fld. 12-15-41.

Binford & Binford, Attorneys at Law, 1208 W. I. Hollingsworth Building, Los Angeles, California. Trinity 3183. Attorneys for Respondent.

[Title of Board and Cause.]

Case No. XXI-C-1957

MOTION TO DISMISS COMPLAINT

Comes now, Stockholders Publishing Company, Inc., and appearing specially and not generally, and

for itself only, and only for the purposes of this Motion, moves to dismiss the complaint issued herein by the National Labor Relations Board through its Regional Director for the Twenty-first Region.

Said motion is made on each and all of the following grounds:

1. That the National Labor Relations Board has no jurisdiction over respondent.

2. That Respondent is not engaged in commerce among the several states, or between the District of Columbia or any territory of the United States and any state or other territory or between any foreign country or any state, territory or the District of Columbia or within the District of Columbia or any territory or between points in the same state or territory or any other state or territory or the District of Columbia or any foreign country, and, therefore, the National Labor Relations Board has no jurisdiction over Respondent.

3. That no member of Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. is an employee of Respondent, and therefore, the National Labor Relations Board has no jurisdiction over Respondent.

4. That the persons particularly referred to in paragraph 6 of the complaint, to-wit, full-time newsboys and checkmen, operating within Los Angeles, California, in so far as their news vending activities are concerned, are not employees of, nor is any one of them an employee of, this Respondent and, therefore, the National Labor Relations Board has no jurisdiction over Respondent.

5. That the members of Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., and the full-time newsboys and checkmen mentioned in the complaint, are, in the conduct of their respective news vending activities, engaged solely in intrastate commerce, and that said persons are not in the conduct of their news vending activities engaged in interstate commerce or in any business activity having a close, intimate, substantial or any relation to trade traffic or commerce among the several states or the territories of the United States and foreign countries, and for such reasons, therefore, the National Labor Relations Board has no jurisdiction over Respondent.

6. That no refusal of Respondent to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. can burden or obstruct commerce, and such refusal can not and has not led or tended to lead, and can not and does not now, and will not, lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over Respondent.

7. That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., or of the full-time newsboys and checkmen, or any of them, can or will burden or obstruct commerce or the free flow of commerce, nor would such cessation lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, for

such reasons therefore, the National Labor Relations Board has no jurisdiction over Respondent.

8. That the National Labor Relations Board has no jurisdiction over the relations of this Respondent with persons engaged in the independent business of vending the newspapers published by this Respondent.

This motion is made by Respondent in reliance upon the rights granted by Article II, Section 14 to 18, inclusive, of Rules and Regulations, Series 2, as amended, of the National Labor Relations Board, and its right to make this motion, or to object to any ruling upon the same shall not be deemed waived by the filing of an answer or by other participation by this Respondent in the proceedings before the Trial Examiner or the Board.

Dated at Los Angeles, California, this 11th day of December, 1941.

BINFORD & BINFORD
By L. B. BINFORD
HOWARD M. BINFORD
Attorneys for Stockholders Publishing Company, Inc.

BOARD EXHIBIT No. 2-F

(Space below for filing stamp only.)

Fld. 12-15-41.

Binford & Binford, Attorneys at Law, 1208 W. I. Hollingsworth Building, Los Angeles, California. Trinity 3183. Attorneys for Respondent.

[Title of Board and Cause.]

Case No. XXI-C-1957

ANSWER OF STOCKHOLDERS PUBLISHING COMPANY, INC.

Comes now Stockholders Publishing Company, Inc., hereinafter called Respondent, and reserving all rights claimed or asserted in any and all pleadings and documents heretofore filed by it in the within case, and reserving all rights under its motion to dismiss said complaint filed concurrently herewith, files this its Answer to the said Complaint issued herein by National Labor Relations Board, through its Regional Director for the 21st Region.

I.

Respondent admits paragraph numbered 1 in said complaint contained.

II.

For its answer to paragraph numbered 2 of said Complaint, Respondent admits that its newspaper "Daily News" is distributed principally in the metropolitan area of the City of Los Angeles, but denies that a "considerable portion" of its circulation is sold and distributed outside of the State of California, and in this respect Respondent alleges that the average daily circulation of its newspaper sold and distributed outside of the State of California does not exceed .031% of its total average daily circulation.

III.

Respondent admits paragraph numbered 3 in said complaint contained.

IV.

Respondent admits the allegations of paragraph numbered 4 of said complaint.

V.

Respondent denies generally and specifically the allegations of paragraph numbered 5 of said complaint.

VI.

Respondent denies generally and specifically the allegations of paragraph numbered 6 of said complaint.

VII.

Respondent denies generally and specifically the allegations of paragraph numbered 7 of said complaint.

VIII.

Respondent admits the allegations of paragraph numbered 8 of said complaint, but avers in this respect that it has at all times maintained and is continuing to maintain a long established policy of meeting and dealing with newsboys or news venders selling Respondent's newspaper, or with representatives of such newsboys or news venders, but admits that it has refused to bargain collectively with Los Angeles Newsboys Local Industrial Union #75, C.I.O.; that such refusal was and is induced by the bonafide belief of Respondent that the National Labor Relations Board has not and never has had jurisdiction over Respondent with respect to Respondent's relationship with newsboys and news venders selling Respondent's newspaper, in that Re-

spondent avers and maintains that such newsboys and news venders are not employees of Respondent, but are, and always have been, independent contractors and operators. That in reaching such conclusions Respondent has been guided by legal advice given to Respondent by its counsel, and has acted in good faith upon such advice.

IX.

Answering paragraph numbered 9 in said complaint contained, Respondent denies that by reason of continuous or any failure or refusal to bargain with the Union Respondent has engaged in or is engaging in any unfair labor practice or practices within the meaning of Section 8, Subsection 1, or Section 8, Subsection 5, of the National Labor Relations Act, for the reasons, amongst others, more specifically set forth in the preceding paragraph, being Respondent's answer to paragraph numbered 8 of said complaint.

X.

Respondent generally and specifically denies all of the allegations of paragraph numbered 10 of said complaint.

XI.

Respondent generally and specifically denies all of the allegations of paragraph numbered 11 of said complaint.

For a second, separate, further and independent defense and answer to said complaint, Respondent alleges:

That the National Labor Relations Board has no jurisdiction over respondent with respect to the matters referred to in said complaint.

For a third, separate, further and independent defense and answer to said complaint, Respondent alleges:

That Respondent is not engaged in commerce among the several states of the United States or between the District of Columbia or any territory of the United States and any state or other territory, or between any foreign country or any state, territory or the District of Columbia. That Respondent is not engaged in inter-state commerce; that therefore the National Labor Relations Board has no jurisdiction of or *other* Respondent.

That no member of the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is an employee of Respondent; that the persons particularly referred to in paragraph numbered 6 of said complaint, being full time newsboys and check men operating in Los Angeles, California, are not, insofar as their news vending activities are concerned, employees of, nor is any one of them an employee of, Respondent; that for such reason the National Labor Relations Board has no jurisdiction over Respondent.

For a fourth, separate, further and independent defense and answer to said complaint, Respondent alleges:

That the members of the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., and the full

time newsboys and check men referred to in said complaint and particularly paragraph numbered 6 thereof, in the conduct of their respective news vending activities, are engaged solely in intra-state commerce, and therefore the National Labor Relations Board has no jurisdiction over Respondent.

That such persons are not engaged in inter-state commerce or in any business activities having a close, intimate, substantial or any relation to trade, tariff or commerce among the several states or territories of the United States and foreign countries; that for such reasons the National Labor Relations Board has no jurisdiction over Respondent.

For a fourth, separate, further and independent defense and answer to said complaint, Respondent alleges:

That no refusal of Respondent to bargain with said Union can burden or did burden or obstruct commerce, and such refusal can not and has not led, and can not or does not now and will not lead or tend to lead to a labor dispute burdening or obstructing the free flow of commerce, and therefore the National Labor Relations Board has no jurisdiction over Respondent in such respects.

That no cessation of the news vending activities of members of said Union or of the full time newsboys and check men selling Respondent's paper can or will burden or obstruct commerce or the free flow of commerce, and therefore the National Labor Relations Board has no jurisdiction over Respondent.

For a fifth, separate, further and independent defense and answer to said complaint, Respondent alleges:

That the National Labor Relations Board has no jurisdiction over the relations of this Respondent with any person or persons who are engaged in the independent business of vending newspapers published by this Respondent.

Wherefore, Respondent prays that the complaint herein be dismissed, and for all appropriate orders.

BINFORD & BINFORD
By L. B. BINFORD
By HOWARD M. BINFORD
Attorneys for Respondent
STOCKHOLDERS PUBLISHING COMPANY, INC.
By R. L. SMITH
Executive Vice President and General Manager

December 10, 1941.
(Duly verified.)

BOARD EXHIBIT No. 4

[Title of Board and Cause.]

Case No. XXI-C-1956

STIPULATION.

It is hereby stipulated and agreed by and between Hearst Publications, Incorporated (Los An-

geles Examiner Department), herein and in these proceedings called "respondent," Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein called "Union," and the National Labor Relations Board, herein called "Board," each through its undersigned counsel or representative, that:

1. There has been no material change in the conduct of the business of respondent since the admission in evidence of "Board's Exhibit No. 18" on June 24, 1940, in the consolidated hearing held at Los Angeles, California, from June 10, 1940 to June 27, 1940, in the cases entitled: "Matter of Stockholders Publishing Company, Inc., et al., Cases Nos. R-1923 to R-1926, inclusive," involving the respondent herein.

2. If all witnesses called by the Union, the Board and respondent at the hearing at Los Angeles, California, from June 10, 1940 to June 27, 1940, were called to testify in this proceeding at this time, their testimony would be substantially the same as the testimony given at said hearing of June 10, 1940 to June 27, 1940; provided, however, that nothing herein contained shall be deemed to constitute an admission by respondent that said testimony was sufficient, or would now be sufficient, to support a finding of fact or conclusion of law that the members of said Union, or any of them, were or are employees of respondent, nor shall anything herein contained be deemed to constitute a waiver by respondent (1) of the right to contend that the evidence taken at said hearing on June 10, 1940 to

June 27, 1940, was insufficient to show that all or any of the members of Los Angeles Newsboys Industrial Union No. 75, C.I.O., or all or any of the persons within the unit held by the Board to be appropriate, were employees of respondent; or (2) of the right to contend, on all or any of the grounds urged before, at, or after said previous hearing, or on all or any of the grounds urged in respondent's motion to dismiss the complaint in this case No. XXI-C-1956, that the Board has no jurisdiction over respondent.

3. On or about November 12, 1941, the Union, by letter sent to respondent, requested that respondent meet with representatives of the Union for the purpose of negotiating a contract for newsboys pursuant to the certification of the Union issued on October 20, 1941, it being stated in said letter that said newsboys were represented by the Union. This letter was received by respondent on or about November 14, 1941, but no reply was made to it. Accordingly, on November 21, 1941, the Union filed a charge with the Regional Director for the Twenty-first Region of the National Labor Relations Board, originating these proceedings in so far as they concern the respondent. Thereafter on November 25, 1941, a conference was held at the offices of said Twenty-first Region. At such conference the Board, the respondent, and the Union were each represented and the representative of respondent in the presence of representatives of the Union stated in effect that inasmuch as its attitude was the same as that of the other newspaper publishers involved in Cases Nos.

XXI-C-1840 and XXI-C-1843, it was not willing to bargain with the Union. Accordingly there has been no bargaining between respondent and the Union.

4. Respondent by entering into this stipulation does not admit, consent or agree that the members of said Union are, or that any one of them is, employees or an employee of respondent within the purview of the National Labor Relations Act, or otherwise. Respondent does not hereby or at all consent to or subject itself to the jurisdiction of the National Labor Relations Board, nor does it waive any of the grounds of objection heretofore asserted and maintained by it in Case No. XXI-R-1084, being also Case No. R-1926, formerly pending before the National Labor Relations Board, and asserted and maintained by it in this Case No. XXI-C-1956 in its "Answer" and in its "Motion to Dismiss Complaint" filed herein.

Dated at Los Angeles, California, this 15th day of December, 1941.

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT)

By LAWLER, FELIX & HALL
A. LAURENCE MITCHELL
Its Counsel
JOHN M. HALL
(John M. Hall)

LOS ANGELES NEWSBOYS
LOCAL INDUSTRIAL
UNION No. 75, C.I.O.
By PAT COMORRE
(Pat Comorre)
Its Secretary
NATIONAL LABOR RELATIONS BOARD
By JAMES A. COBEY
(James A. Cobey)
Its Attorney

BOARD EXHIBIT No. 5

Binford & Binford, Attorneys at Law, 1208 W. I. Hollingsworth Building, Los Angeles, California. TRinity 3183, Attorneys for Respondent.

(Space below for filing stamp only)

[Title of Board and Cause.]

Case No. XXI-C-1957

STIPULATION

It Is Hereby Stipulated by and between Stockholders Publishing Company, Inc., herein called "Respondent," and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein called "Union", and National Labor Relations Board, herein called "Board," each through its undersigned counsel or representative, as follows:

1. That there has been no material change in

the conduct of the business of the Respondent since the admission in evidence of "Board's Exhibit No. 10" on June 19, 1940, in the consolidated hearing held in Los Angeles, California, from June 10, 1940 to June 27, 1940, in the cases entitled "Matter of Stockholders Publishing Company, Inc., et al, Cases R-1923 to R-1926, inclusive," involving the Respondent herein.

2. If all witnesses called by the Union, the Board or Respondent at the hearing at Los Angeles, California from June 10, 1940 to June 27, 1940, were called to testify in this proceeding at this time their testimony would be substantially the same as the testimony given at said hearing of June 10th to June 27th, 1940; provided, however, that nothing herein contained shall be deemed to constitute an admission by Respondent that said testimony was sufficient, or would now be sufficient, to support a finding of fact or conclusion of law that the members of said Union, or any of them, were or are, in so far as their news vending activities are concerned, employees of Respondent, nor shall anything herein contained be deemed to constitute a waiver by Respondent (1) of the right to contend that the evidence taken at said hearing on June 10th to 27th, 1940, was insufficient to show that all or any of the members of Los Angeles Newsboys, Industrial Union No. 75, C. I. O., or all or any of the persons within the unit held by the Board to be appropriate, were employees of Respondent; or (2) of the right to contend, on all or any of the grounds

urged before, at, or after said previous hearing that the Board has no jurisdiction over Respondent.

3. On or about August 26, 1941, the union, by letter sent by registered mail to the Respondent, requested the Respondent to meet with it for the purpose of bargaining collectively pursuant to the certification of the Union issued by the Board on July 30, 1941, in the aforementioned consolidated proceedings. On August 27, 1941, the Respondent acknowledged receipt of this letter. However, thereafter the Respondent failed to comply with the request; and, accordingly, on November 21, 1941, the Union filed a charge with the Regional Director for the Twenty-first Region of the Board, originating these proceedings in so far as they concern the Respondent. Thereafter on November 27, 1941, a conference was held at the offices of said Twenty-first Region. At this conference the Board, the Respondent, and the Union were each represented; and the representatives of the Respondent in the presence of the representatives of the Union stated in effect that the Respondent, although willing to continue its long established policy of meeting and dealing with representatives of the newsboys distributing and selling its newspapers, was not willing to bargain collectively with the Union under the aforementioned certification.

4. It is further stipulated and agreed that Respondent, by entering into this stipulation does not admit, consent or agree that the said members of

said Union are, or any of them is, in so far as news vending activities are concerned, employees or an employee of the Respondent, within the purview of the National Labor Relations Act or otherwise, and said Respondent does not hereby consent to or subject itself to the jurisdiction of the National Labor Relations Board, nor does it waive any of the grounds of objection heretofore asserted and maintained by it in Case No. XXI-R-928, also numbered R-1924, formerly pending before the National Labor Relations Board, and asserted and maintained by it in this case numbered XXI-C-1840 in its "Answer" and in its "Motion to Dismiss", both heretofore filed herein.

Dated at Los Angeles, California, this 11th day of December, 1941.

STOCKHOLDERS PUBLISHING COMPANY, INC.

By L. B. BINFORD,
HOWARD M. BINFORD,
Its Attorneys.

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.

By PAT COMORRE,

NATIONAL LABOR RELATIONS BOARD,

By JAMES A. COBEY.

[Title of Board and Causes.]

Case No. XXI-C-1956[1]

Case No. XXI-C-1957

Mr. James A. Cobey, for the Board.

Lawler, Felix & Hall, by Mr. John M. Hall, of Los Angeles, California, for respondent Examiner.

Binford & Binford, by Mr. L. B. Binford, of Los Angeles, California, for respondent News.

Mr. Pat. Comonre, of Los Angeles, California, for the Union.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon charges duly filed[2] by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaints, dated December 5, 1941, against Hearst Publications, Incorporated (Los Angeles Examiner Department) and

---

[1] By order of the National Labor Relations Board dated December 3, 1941, Cases No. XXI-C-1956 and No. XXI-C-1957 were consolidated. The respondents excepted to this order at the hearing.

[2] The charges against Hearst Publications, Incorporated (Los Angeles Examiner Department), and against Stockholders Publishing Company, Inc., were filed on November 21, 1941.

Stockholders Publishing Company, Inc., herein called the respondents, or respectively, the Examiner and the News, alleging that the respondents had engaged in, and were engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaints, accompanied by notice of hearing thereon, were duly served upon the respondents and the Union.

Concerning the unfair labor practices the complaints alleged in substance: (1) that on or about November 14, 1941, and thereafter, the Examiner, and on or about August 27, 1941, the News, refused to bargain collectively with the Union as the exclusive representative of their employees within appropriate bargaining units, although at that time said Union represented a majority of such employees, and (2) that by such refusals the respondents interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

On December 15 and December 16, respectively, the Examiner and the News filed their answers admitting certain allegations in the complaints but denying the commission of any unfair labor practices and interposing certain affirmative defenses.

Pursuant to notice, a hearing was held in Los Angeles, California, on December 16, 1941, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board

and the respondents were represented by counsel and the Union by its representative. All parties participated in the hearing. Full opportunity to be heard, to examine and cross examine witnesses and to introduce evidence bearing on the issues, was afforded all parties.

At the commencement of the hearing the respondents filed their individual motions to dismiss the complaints, based in general upon the grounds that the Board was without jurisdiction, that the persons alleged in the complaints to constitute the appropriate units for the purposes of collective bargaining were engaged solely in a business of an intra-state nature and were not employees of the respondents. The undersigned denied said motions.

Upon the record thus made, and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT

I. The business of the respondents[3]

A. Hearst Publications, Incorporated (Los Angeles Examiner Department)

Hearst Publications, Incorporated, is a California

[3] On January 9, 1941, the Board issued its "Decision and Direction of Elections" in Cases R-1923 to 1926 entitled "Matter of Stockholders Publishing Company, Inc., et al", involving both the Examiner and the News and, in part, the same issues as are involved in the present proceeding. As

corporation with its principal office and place of business in San Francisco, California. It is engaged in the publication of various daily and Sunday newspapers, including the Los Angeles Examiner. The Examiner is a morning newspaper published daily, including Sunday, at its plant in Los Angeles, California. It has a daily average circulation of approximately 213,460 copies and a Sunday circulation of approximately 566,175 copies. It is distributed throughout the State of California principally in the metropolitan area of Los Angeles. Of the daily circulation, approximately 2 per cent are sold and distributed outside the State of California. Of the Sunday edition, approximately 9 per cent are sold and distributed outside the State of California.

The principal raw materials used in printing the Examiner include newsprint, mats, and ink. During the year 1939, all the newsprint, consisting of 31,470 tons, was obtained from the States of Washington

---

the parties hereto stipulated at the present hearing that there had been no material change in the conduct of the respondents' businesses since the time of the hearing on which the above "Decision and Direction of Elections" was based, and that if the witnesses called by the parties in that hearing were called to testify in the present proceeding, their testimony would be substantially the same, and as the respondents introduced no relevant evidence at the present hearing, the undersigned accepts the findings in said "Decision and Direction of Elections" in cases R-1923 to 1926 (28 N. L. R. B. No. 151) insofar as they are determinative of matters material herein.

and Oregon and the Dominion of Canada. During the same period, all the mats, numbering 54,000, were obtained from the State of New York. The ink used, amounting to 1,065,581 pounds, was manufactured in the State of California.

The Examiner uses International News Service, Associated Press, and Dow-Jones Financial Service wire reports. It uses daily approximately 88,750 words obtained from these services. The Examiner supplies at least one wire service engaged in the interstate transmission of news with local news which the Examiner has collected. In 1939 the Examiner received and published approximately 58 feature services, the material for many of which was prepared and originated in States other than the State of California.

During the year 1939 an average of 32 per cent of the space in the daily and 48 per cent of the Sunday issues of the Examiner were devoted to advertising. Of this advertising space, 89.67 per cent contained advertising originating in the State of California while the remainder, 10.33 per cent, contained advertising originating outside the State of California.

B. Stockholders Publishing Company, Inc.

Stockholders Publishing Company, Inc., a Nevada corporation, having its principal place of business in Los Angeles, California, is engaged in the publication, distribution and sale of a daily (except Sunday) newspaper called "The News." The principal

raw materials used in the printing of the News consist of newsprint, mats, ink and photographic supplies. During the year 1939 all the newsprint, costing approximately $470,000, all the mats costing approximately $4,800 were obtained outside the State of California. During the same period all the ink, costing approximately $16,000, and most of the photographic supplies costing approximately $3,600, were purchased within the State of California.

The daily average circulation of the News for March, 1940, was 195,725 copies, of which .031 per cent were circulated and distributed outside the State of California.

The News uses the wire reports of United Press which furnishes news sent from outside the State of California. It uses daily approximately 27,000 words obtained from this wire service. In 1939 the News published 13 feature services which it received from service houses located outside the State of California.

During 1939, 9,909,000 lines of space was devoted to local, national, and classified advertising. Of this advertising space, 1,500,000 lines were devoted to national advertising.

II. The organization involved

Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership employees of the respondents.

III. The unfair labor practices

A. The refusal to bargain collectively

1. The appropriate unit

The complaints alleged, the Board found in its "Decision and Direction of Elections" dated January 9, 1941,[4] and as the respondents offered no contrary evidence during the present hearing, the undersigned finds that: (1) All newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week within Los Angeles, California, except temporary newsboys, and (2) all full-time newsboys and check men who are engaged to sell the News within Los Angeles, California, excluding bootjackers,[5] temporary, casual,[6] and part-time newsboys, constitute units appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and the undersigned further finds that the aforesaid employees at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining, and that such units will insure to employees of the respondents the full benefit of their right to self

[4] 28 N.L.R.B. No. 151.

[5] A bootjacker is a newsboy who sells to the general public at places other than established corners or spots.

[6] The terms "temporary" and "casual" are used synonymously and they are here intended to have their ordinary meaning.

organization and to collective bargaining and otherwise effectuate the policies of the Act.

2. Representation by the Union of a majority in the appropriate units

As a result of elections by secret ballot conducted among the employees of the Examiner on May 17, 1941, and among the employees of the News on May 15, 1941, under the direction and supervision of the Regional Director for the Twenty-First Region (Los Angeles, California), pursuant to the aforementioned "Decision and Direction of Elections,"[7] and various amendments thereto,[8] the Board issued its "Supplemental Decision and Certification of Representatives" dated July 30, 1941,[9] and its "Supplemental Decision and Certification of Representatives" dated October 20, 1941,[10] in which it certified that the Union had been designated and selected by a majority of all employees within the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act the Union was the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

---

[7]See footnote (4) above.

[8]29 N.L.R.B. No. 16; 29 N.L.R.B. No. 16 (a); 30 N.L.R.B. No. 110; 30 N.L.R.B. No. 110 (a); 31 N.L.R.B. No. 115.

[9]33 N.L.R.B. No. 168.

[10]36 N.L.R.B. No. 51.

As the respondents offered no evidence on this point at the present hearing, the undersigned finds that on, and at all times after, October 20, 1941, in respect to the Examiner, and on, and at all times after, July 30, 1941, in respect to the News, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate units, and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times, and is now, the exclusive representative of all the employees in the aforesaid units for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

3. The refusal to bargain

The complaints alleged, and the answers of the respondents admitted, that on or about November 14, 1941, and thereafter in respect to the Examiner, and on or about August 27, 1941, and thereafter, in respect to the News, the respondents refused to bargain collectively with the Union. The answers of the respondents plead in justification that such refusals to bargain were based upon advice of competent counsel and in the bona fide belief that the Board had no jurisdiction over the respondents in respect to their relationship with their news vendors who, the answers alleged, were independent contractors and not employees, and who, according to the answers, were engaged in business of an intrastate character solely. The aforementioned answers further denied that the respondents were engaged in interstate commerce

within the meaning of the Act. As the Board, in its "Decision and Direction of Elections" in Cases No. R-1923 to 1926, inclusive, held that the respondents were engaged in interstate commerce, and therefore within the jurisdiction of the Act, that the news vendors were employees of the respondents, and as the respondents offered no relevant evidence at the present hearing to the contrary, the undersigned finds that the respondents' plea in justification is without merit.

The undersigned finds that the respondent Examiner on November 14, 1941, and the respondent News on August 27, 1941, and at all times thereafter, have refused to bargain collectively with the Union as the exclusive representative of their employees in the appropriate units and have thereby interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondents, set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Since it has been found that the respondents have engaged in unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action, designed to effectuate the policies of the Act.

It has been found that each respondent has refused to bargain collectively with the Union as the representative of a majority of the employees in the appropriate unit, pertaining to said respondent. It will therefore be recommended that the respondents bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. The following employees of Hearst Publications, Incorporated (Los Angeles Examiner Department), at all times material herein, constituted, and now constitute, the unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: All newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week within Los Angeles, California, except temporary newsboys.

3. The following employees of Stockholders Pub-

lishing Company, Inc., at all times material herein, constituted, and now constitute, the unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: All fulltime newsboys and checkmen who are engaged to sell the News within Los Angeles, California; excluding bootjackers, temporary, casual and part-time newsboys.

4. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., has been at all times material herein the exclusive representative of all employees in the aforesaid units for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as exclusive representative of all their employees in the aforesaid appropriate units, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

6. By interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent Hearst Publications, Incorporated (Los Angeles Examiner Department), and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75 C.I.O., as the exclusive bargaining representative of all newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week, within Los Angeles, California, except temporary newsboys.

(b) Engaging in any like, or related, acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive representative of all newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week, within Los Angeles, California, except temporary newsboys, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post notices immediately in conspicuous places in its plant and office at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a) and (b) of these recommendations and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Twenty-First Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent Stockholders Publishing Company, Inc., and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys.

(b) Engaging in any like, or related, acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive representative of all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys in respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) Post notices immediately in conspicuous places in its plant and office at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a) and (b) of these recommendations and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations.

(c) Notify the Regional Director for the Twenty-First Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended—any party may within thirty (30) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D.C., an original and four

copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within twenty (20) days after the date of the order transferring the case to the Board.

Dated: January 7, 1942

THOS. S. WILSON,
Trial Examiner.

[Title of Board and Cause.]

Case No. C-2050 (XXI-C-1956)

EXCEPTIONS OF HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT), TO THE INTERMEDIATE REPORT AND OTHER PARTS OF THE RECORD AND PROCEEDINGS.

(Stamped): Received original and copies of exceptions.

Comes now Hearst Publications, Incorporated (Los Angeles Examiner Department), respondent herein, and files this, its Exceptions to the Intermediate Report of the Trial Examiner, Honorable Thos. S. Wilson, and to other parts of the record and proceedings (including rulings on motions and

objections) and to findings, conclusions of law and rulings as hereinafter specified in Case No. R-1926, also numbered XXI-R-1084.

Said Intermediate Report is dated January 7, 1942, and the above entitled and numbered case was transferred to and continued before the Board pursuant to order of the Board dated January 10, 1942.

These Exceptions are filed pursuant to Article II, Section 33, of National Labor Relations Board Rules and Regulations, Series 2, as amended.

Exceptions to Intermediate Report,
Dated January 7, 1942.

(1) To "Finding II. The organization involved," appearing on page 4 of the Intermediate Report, reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership employees of the respondents."
>
> (Page 4, lines 1 to 5.)

(2) To that portion of Finding contained in Section 1, entitled "The appropriate unit," of subparagraph A of paragraph III, appearing on page 4 of said Intermediate Report, reading as follows:

> "* * * the undersigned finds that: (1) All newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week within Los Angeles, California, except temporary

newsboys, * * * constitute units appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, and the undersigned further finds that the aforesaid employees at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining, and that such units will insure to employees of the respondents the full benefit of their right to self organization and to collective bargaining and otherwise effectuates the policies of the Act."

(Page 4, lines 11 to 29.)

(3) To that portion of Finding contained in Section 2, entitled "Representation by the Union of a majority in the appropriate units," of subparagraph A of paragraph III, appearing on pages 4 and 5 of said Intermediate Report, reading as follows:

"* * * the undersigned finds that, on, and at all times after, October 20, 1941, in respect to the Examiner, * * * the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate units, and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times, and is now, the exclusive representative of all the employees in the aforesaid units for the purposes of col-

lective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment."

(Page 4, line 50 to page 5, line 8.)

(4) To those portions of Finding contained in Section 3, entitled "The refusal to bargain," of subparagraph A of paragraph III, appearing on page 5 of said Intermediate Report, reading as follows:

"* * * and as the respondents offered no relevant evidence at the present hearing to the contrary, the undersigned finds that the respondents' plea in justification is without merit.

"The undersigned finds that the respondent Examiner on November 14, 1941, * * * and at all times thereafter, have refused to bargain collectively with the Union as the exclusive representative of their employees in the appropriate units and have thereby interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act."

(Page 5, lines 28 to 37.)

(5) To Finding IV, entitled "The effect of the unfair labor practices upon commerce," appearing on page 5 of said Intermediate Report, reading as follows:

"The activities of the respondents, set forth in Section III above, occurring in connection with the operations of the respondents described

in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(Page 5, lines 39 to 47.)

(6) To Finding V, entitled "The remedy," appearing on page 5 of the Intermediate Report, and reading as follows:

"Since it has been found that the respondents have engaged in unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action, designed to effectuate the policies of the Act.

"It has been found that each respondent has refused to bargain collectively with the Union as the representative of a majority of the employees in the appropriate unit, pertaining to said respondent. It will therefore be recommended that the respondents bargain collectively with the Union."

(Page 5, lines 49 to 60.)

(7) To that portion of the "Conclusions of Law" appearing on page 6 of said Intermediate Report, reading as follows:

1. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization within the meaning of Section 2 (5) of the Act.

"2. The following employees of Hearst Pub-

lications, Incorporated (Los Angeles Examiner Department), at all times material herein, constituted, and now constitute, the unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: All newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week within Los Angeles, California, except temporary newsboys.

* * * * * * *

"4. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., has been at all times material herein the exclusive representative of all employees in the aforesaid units for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

"5. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as exclusive representative of all their employees in the aforesaid appropriate units, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

"6. By interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8 (1) of the Act.

"7. The aforesaid unfair labor practices are

unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act."

(Page 6, lines 3 to 43.)

(8) To those portions of "Recommendations" appearing on pages 6, 7 and 8 of said Intermediate Report, reading as follows:

"1. Cease and desist from:

"(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of all newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week, within Los Angeles, California, except temporary newsboys.

"(b) Engaging in any like or related acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

"2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

"(a) Upon request bargain collectively with the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive representative of all newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week, within Los Angeles, California, except temporary newsboys, in respect to rates of pay, wages, hours of employment and other conditions of employment;

"(b) Post notices immediately in conspicuous places in its plant and office at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a) and (b) of these recommendations and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

"(c) Notify the Regional Director for the Twenty-First Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith."

(Pages 6 and 7, line 53, page 6 to line 31, page 7.)

"It is further recommended that unless on or before twenty (20) days from the receipt of

this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid."

(Page 8, lines 15 to 19.)

Exceptions to Rulings at the Hearings in These Proceedings on December 16, 1941.

(9) To the ruling overruling objection of this respondent to consolidation order dated December 3, 1941 (Board's Ex. 1-B). This ruling appears in the Official Report of Proceedings, page 9, lines 2 and 3, the objection thus overruled appearing on page 7, line 22, to page 9, line 1.

(10) To the ruling overruling objection of this respondent to Board's Exs. Nos. 2-A-1, 2-A-2, 2-A-3, 2-A-4, 2-B, 2-C, 2-D, 2-E, 2-F and 2-G. This objection and ruling appear in the Official Report of Proceedings, page 17, lines 11 to 16.

(11) To the ruling overruling objection of this respondent to Board's Exs. 3, 3-A, 3-B, 3-C, 3-D, 3-E, 3-F, 3-G, 3-H and 3-I. This objection and ruling appear in the Official Report of Proceedings, beginning at line 15 on page 21 and ending on page 22, line 9.

(12) To the ruling overruling objection of this respondent to Board's Ex. 5. This objection and ruling appear in the Official Report of Proceedings between page 23, line 7 and page 24, line 22.

(13) To the ruling denying this respondent's motion to strike a question propounded to the witness Comorre and his answer thereto. This question and answer, the motion to strike and the ruling thereon appear in the Official Report of Proceedings between page 30, line 25, and page 32, line 2.

(14) To the ruling refusing to admit in evidence Los Angeles Examiner's Exs. 1 and 2 for identification. The offer of such exhibits and the objections thereto, and the rulings upon such objections, appear in the Official Report of Proceedings between page 35, line 22, and page 39, line 24.

(15) To the denial of this respondent's Motion to Dismiss Complaint (Board's Ex. 1-C). It is stated in the Intermediate Report, page 2, line 35, that this Motion was denied by the Trial Examiner.

Exceptions to Rulings in the Case Instituted for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act, Being Case No. R-1926 (XXI-R-1084).

(16) To the denial by the Board of this respondent's Motion to Dismiss Petition, for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act (Examiner's Ex. 2 in said case No. R-1926). The Board's ruling appears in its Decision and Direction of Elections, dated January 9, 1941 (Board's Ex. 3-A).

(17) To Finding II, entitled "The organization involved" of the Board, appearing on page 6 of the said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in the metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines, and periodicals, except those who have the power to hire and discharge."

(18) To those portions of Finding III, entitled "Status of the newsboys involved in this proceeding," commencing at page 7 of said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

> "Circulation manager of the respective Companies control the general execution of their policies relating to newspaper distribution. The metropolitan area of Los Angeles, the territory in which the newspapers are generally distributed, is divided for administrative purposes into specific geographichl districts, and district managers assigned by the circulation manager to assist in the circulation and distribution of the newspaper in these districts control the execution of the Companies' policy with respect to newspaper circulation and distribution within such districts.
>
> * * * * * * *

"* * * The newspapers are delivered to newsboys, who sell them to the public, or are delivered to so-called checkmen stationed at important corners or spots who redistribute the newspapers to newsboys stationed at neighboring corners or spots of lesser importance. For his services in redistributing newspapers the checkman receives a small salary from the publisher. He is carried on the publisher's pay roll. At least to the extent of such services, he is admittedly an employee of the publisher. In addition to such wholesaling activities, the checkman sells newspapers to the public and, in all other respects, he occupies a position similar to that of the ordinary newsboy.

* * * * * * *

"* * * Likewise the district manager enters a charge, which is set by the publisher, against the newsboy or the checkman, as the case may be, for each newspaper delivered * * * and the checkman charges the newsboy an amount equal to the sum charged the checkman by the district manager. At the end of the selling period, the newsboys settle with the district manager or the checkman, as the case may be, the checkmen settle with the district manager, and the district manager accounts to his superior for the newspapers.

* * * * * * *

"* * * it is undenied that the district managers unilaterally determine the number of

'extra' papers, in excess of the established order, which the newsboys must attempt to sell. Moreover, in practice, the newsboys cannot determine the size of their established order without the cooperation of the district manager. (Pages 6, 7 and 8.)

* * * * * * * *

"Celestino Sanchez, Grover C. Nixon, and Harry L. Buhl, Examiner newsboys, gave similar testimony with reference to the distribution of the Examiner establishing that the district managers determine the number of papers delivered to those newsboys.

* * * * * * *

"The newsboy customarily obtains his corner or spot by making application at the plant of the publisher where he consults a district manager. The applicant usually inquires whether there is a corner or spot 'open.' If an opening exists, the district manager escorts the newsboy to the corner or spot and furnishes him with newspapers or directs him to a checkman who shows the newsboy his territory and furnishes him with newspapers.

* * * * * * *

"Not only do the district managers of the Companies allocate corners and spots, they also issue detailed directions as to specific places within the newsboy's allotted territory in which to engage in selling activities, particularly with

reference to standing in street traffic and covering business establishments where large numbers of people congregate.

(Page 10.)

* * * * * * *

"* * * When Ernie Latham first began selling the Examiner, William Jackson, Examiner district manager, took Latham to his corner, told him to 'watch' the corner, to 'work' the market located nearby, and to 'work the white traffic lines' in the street. On another occasion, Jackson told Latham, who then operated as a checkman, to instruct an off-spot boy to whom he supplied papers 'to work in the safety zone.'

* * * * * * *

"* * * To facilitate the work of the newsboy and to increase circulation, according to the testimony of several newsboys, the district managers distribute such equipment and advertising matter to the newsboys with instructions to keep the newspapers in the boxes or the racks and to display the advertising matter on posts, fire plugs, or other vantage points.

"Generally the newsboy is required to be at his post from the time the newspapers customarily appear on the street to the time settlement is made. Instances are found in the record where the district manager definitely fixed the newsboy's hours.

(Page 11.)

* * * * * * *

"The record is replete with instances in which district managers have removed, permanently or temporarily, newsboys from their corners or transferred them from one location to another, for various reasons.

* * * * * * *

"* * * In September 1939, Nick Volanty removed Charles Seklemian from his spot and later reinstated him. According to the latter's testimony, Seklemian was told by Volanty that he had received a telephone call at the office of the Examiner from an operator of a beer garden in Seklemian's territory who stated that he would bar Seklemian from the beer garden since he wore a Bridges or C.I.O. button. Seklemian further testified that he was chided by Volanty for not concealing such buttons, that Volanty stated that Seklemian's sales had been declining, and that Volanty informed Seklemian that 'the office was sending out another hustler' as a substitute at a cost of $4.50 for the night.' As a result, the next night Seklemian did not sell papers. The following night, however, he persuaded Volanty to change his mind and obtained reinstatement. In his testimony Volanty denied generally that he ever paid a newsboy any amount to substitute for Seklemian; otherwise, he failed to testify about the button incident or Seklemian's removal. We find that Seklemian was removed from his corner and subsequently reinstated under cir-

cumstances substantially as related above by him.

"The record also contains evidence with respect to the extent of the Companies' supervision over the conduct of the newsboys while they are engaged in selling newspapers on the street * * * the diligence of the newsboys is closely observed by the circulation department. * * * The supervisor or the investigator transmits the complaints to the district manager who brings the matter to the attention of the offending newsboy with the view of remedying the situation in the future. * * * On one occasion when William Jackson, Examiner district manager, found Ernie Latham, an Examiner newsboy, sitting on a fire plug and holding one remaining copy of an early edition of the Examiner, Jackson inquired why Latham was not working, stated that 'the office would be on him if they caught Latham sitting down,' and told Latham '* * * to get out there and sell those papers.' On another occasion, Jackson arrived at Latham's location while he was eating his lunch in the corner drug store. When Latham's object in visiting the drug store was learned by Jackson, he told Latham to 'get a sandwich and stay outside on the corner.'

(Pages 12 and 13.)

* * * * * * *

"* * * Likewise, Abie Peters, Examiner dis-

trict manager, instructed Ernie Latham not to handle the Times * * *

(Page 14.)

* * * * * * *

"On the basis of the foregoing, we are of the opinion that the Companies have the right to exercise, and do exercise, such control and direction over the manner and means in which the newsboys perform their selling activities as establishes the relationship of employer and employee for the purposes of the Act. Through the district managers, who are authorized to act as publishers' representatives in the circulation and distribution of their newspapers, the Companies hire the newsboys by the allotment of corners and spots, thus providing them with a place to work, furnish company-owned equipment and paraphernalia to facilitate newspaper sales, and require the newsboys' attendance at their posts and attention to their work, within customary limits, during relatively definite hours. Moreover, the Companies control the number of papers delivered to the newsboys for the purpose of sale, limit their earnings by the establishment of a fixed 'wholesale' and retail price for the newspapers, afford them a return privilege for unsold papers with the exceptions hereinabove noted, and supervise the newsboys' selling activities as to such details of performance as the manner of calling, hold-

ing, and displaying the newspaper, and place of its sale within the allotted territory. Furthermore, the Companies at will discharge the newsboys, transfer them to other locations, and lay them off as disciplinary measures. The newsboy is not free to sell where he will; he must operate in a certain area under company-imposed conditions; if he does not succeed in selling, he will be dismissed. Since the relationship contemplates services of an indefinite duration terminable at the will of either party, the newsboy has no vested interest in the newspaper business. Although he is not carried on the Companies' pay rolls, the newsboy is an integral part of the Companies' distribution system and circulation organization.

* * * * * * *

"* * * The method by which the newsboys are compensated for their services is a convenient accounting device employed by the Companies to measure the earnings of the newsboys and to provide an incentive for increased newspaper circulation.

(Page 15.)

* * * * * * *

"* * * We * * * hold upon this record that the newsboys here involved are within the definition of employees as the term is used in this Act. Accordingly, we find that the newsboys involved in this proceeding are employees with-

in the meaning of Section 2 (3) of the Act." (Page 16.)

(19) To that portion of Finding IV entitled "The question concerning representation," appearing on page 16 of said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

> "* * * We find that questions have arisen concerning the representation of employees of the Companies."

(20) To that portion of Finding V entitled "The effect of the questions concerning representation upon commerce," appearing on page 16 of said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

> "We find that the questions concerning representation which have arisen, occurring in connection with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(21) To that portion of Finding VI entitled "The appropriate units" appearing on pages 17 and 18 of said Decision and Direction of Elections, dated January 9, 1941, and reading as follows:

> "* * * All newsboys engaged in the selling of newspapers in the metropolitan area of Los

Angeles are eligible to membership in the Union.

* * * * * * *

* * * Since those whom the Union desires to be included in the unit are, in general, mature individuals who daily rely upon their earnings from the street vending of newspapers as their source of support, since the Union is the only labor organization existing among the newsboys, and because union organization has not at present extended to suburban newsboys other than the Times newsboys in Glendale, California, we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: * * * (d) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys. We further find that said units will insure to employees of the Companies the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act."

(Pages 17 and 18.)

(22) To that portion of Finding VII entitled "The determination of representatives" appearing on page 19 of said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

* * * we find that the questions of repre-

sentation which have arisen can best be resolved in elections by secret ballot * * *"

(23) To the "Conclusion of Law" appearing on page 19 of said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

"1. Questions affecting commerce have arisen concerning the representation of employees of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

"2. The following employees of * * * Hearst Publications, Incorporated (Los Angeles Examiner Department), * * * constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: * * * (d) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys."

(24) To that portion of said Decision and Direction of Elections, dated January 9, 1941, entitled "Direction of Elections," appearing on pages 19 and 20 thereof, reading as follows:

"Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining, elections by secret ballot shall be conducted as early as possible but not later than

thirty (30) days from the date of this Direction of Elections, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the employees of the Companies within the groups described below who were employed by any of the Companies on the date of this Direction of Elections, including employees who did not work on said date because they were ill or on vacation, and employees who were then or shall have since been temporarily laid off, and excluding employees who shall have since quit or been discharged for cause:

* * * * * * *

"(d) All newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys; to determine whether or not said employees desire to be represented by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., for the purposes of collective bargaining."

(25) To each and every part of the "Order Overruling 'Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in said Elections (Los Angeles Ex-

aminer Unit)'" dated May 26, 1941, in case No. R-1926.

(26) To each and every part of the Report on Objections in case No. R-1926, dated September 8, 1941.

(27) To those portions of the Supplemental Decision and Direction in case No. R-1926, dated September 26, 1941 (Board's Ex. 3-H) on pages 2 and 3 thereof, reading as follows:

> "* * * an election by secret ballot was conducted on May 15, 1941, under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California) among employees of the Los Angeles Examiner * * * *
>
> * * * * * * *
>
> "* * * * We have considered the Los Angeles Examiner's Objections and find that they raise no substantial or material issues with respect to the conduct of the ballot. We hereby overrule the said Objections in their entirety."

(28) To that portion of "Certification of Representatives" in Case No. R-1926, dated October 20, 1941 (Board's Ex. 3-I), appearing on pages 2 and 3 thereof, reading as follows:

> "* * * an election by secret ballot was conducted on May 15, 1941, under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California), among employees of Hearst Publica-

tions, Incorporated (Los Angeles Examiner Department), * * *

* * * * * * * * *

"It is Hereby Certified that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of Hearst Publications, Incorporated (Los Angeles Examiner Department), Los Angeles, California, who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9(a) of the Act, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment."

Grounds for the foregoing exceptions are more particularly stated in this respondent's Motion to Dismiss Complaint herein (Board's Ex. 1-C), and in a Brief of this respondent filed concurrently herewith, pursuant to Sec. 33 of Art. II of the Rules and Regulations of the Board, Series 2, as amended. Further, and without limiting the generality of the foregoing, this respondent states the following grounds for the foregoing exceptions:

I.

No evidence supports the finding of the Trial Examiner that the claimed bargaining unit was an appropriate unit.

II.

No evidence supports the finding of the Trial Examiner that the newsboys within the designated unit were employees of this respondent.

III.

No refusal of this respondent to bargain with the Union could affect commerce within the meaning of the National Labor Relations Act.

Dated at Los Angeles, California, January 28, 1942.

HEARST PUBLICATIONS, INCORPORATED, (LOS ANGELES EXAMINER DEPARTMENT)
By Its Attorneys:
LAWLER, FELIX & HALL,
JOHN M. HALL,
A. LAURENCE MITCHELL,
By JOHN M. HALL.

[Title of Board and Cause.]

Case No. C-2051
(XXI-C-1957)

EXCEPTIONS OF STOCKHOLDERS PUBLISHING COMPANY, INC., TO THE INTERMEDIATE REPORT AND OTHER PARTS OF THE RECORD AND PROCEEDINGS

Comes now Stockholders Publishing Company, Inc., Respondent herein, and files this, its Exceptions, to the Intermediate Report of the Trial Examiner, Honorable W. P. Webb, and to certain other parts of the record, proceedings and motions, and to findings, conclusions of law and rulings as hereinafter specified in Case No. XXI-R-929.

The Intermediate Report is dated January 7, 1942, and the above entitled and numbered case was transferred and continued before the Board pursuant to order of the Board dated January 10, 1942.

These Exceptions are filed pursuant to Article II, Section 33, of National Labor Relations Board Rules and Regulations, Series 2, as amended.

Respondent's Exceptions to said Intermediate Report dated January 7, 1942, as follows:

(1) To "Finding II. The organization involved," appearing on Page 4, Lines 1 to 5, of the Intermediate Report, reading as follows:

"Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization

"* * * the undersigned finds that: * * * * chartered by the Congress of Industrial Organizations admitting to membership employees of the Respondents."

(2) To that portion of Finding No. III entitled "The appropriate unit," appearing between Lines 18 and 30 on Page 4 of said Intermediate Report, reading as follows:

(2) all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, constitute units appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and the undersigned further finds that the aforesaid employees at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining, and that such units will insure to employees of the respondents the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act."

(3) To that portion of the Finding No. III, Section 2, entitled "Representation by the Union of a majority in the appropriate units", appearing on Page 4, Line 50, and on Page 5, Lines 1 to 9, of said Intermediate Report, reading as follows:

"* * * the undersigned finds that on, and at

all times after, * * * July 30, 1941, in respect to the News, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate units, and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times, and is now, the exclusive representative of all the employees in the aforesaid units for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment."

(4) To those portions of Finding No. III, Section 3, entitled "The refusal to bargain," appearing on Page 5, Lines 29 to 37, of the Intermediate Report, reading as follows:

"* * * the undersigned finds that the respondents' plea in justification is without merit.

The undersigned finds that the * * * respondent News on August 27, 1941, and at all times thereafter, have refused to bargain collectively with the Union as the exclusive representative of their employees in the appropriate units and have thereby interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act."

(5) To Finding No. IV entitled "The effect of the unfair labor practices upon commerce," appearing on Page 5, Lines 40 to 47, of said Intermediate Report, reading as follows:

"The activities of the respondents, set forth in Section 3 above, occurring in connection with the operations of the respondents described in Section 1 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(6) To Finding No. V entitled "The remedy", appearing on Page 5, Lines 50 to 60 of said Intermediate Report, reading as follows:

"Since it has been found that the respondents have engaged in unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action, designed to effectuate the policies of the Act.

"It has been found that each respondent has refused to bargain collectively with the Union as the representative of a majority of the employees in the appropriate unit, pertaining to said respondent. It will therefore be recommended that the respondents bargain collectively with the Union."

(7) To that portion of the "Conclusions of Law" appearing on Page 6, Lines 15 to 43 of said Intermediate Report, reading as follows:

"* * * The following employees of Stockholders Publishing Company, Inc., at all times material herein, constituted, and now consti-

tute, the unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: All full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys.

4. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been at all times material herein the exclusive representative of all employees in the aforesaid units for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as exclusive representative of all their employees in the aforesaid appropriate units, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

6. By interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act."

(8) To those portions of "Recommendations", appearing on Page 7, Lines 38 to 62 and on Page 8, Lines 1 to 20 inclusive, of said Intermediate Report, reading as follows:

"1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers; temporary, casual and part-time newsboys.

(b) Engaging in any like, or related, acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative

of all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys in respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) Post notices immediately in conspicuous places in its plant and office at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations.

(c) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid."

(9) To the Examiner's ruling on Respondent's objection to the order of consolidation, which objection will be found on Page 7, Lines 22 to 25 inclusive, and Page 8, Lines 1 to 22 inclusive of the Official Report of Proceedings, and which ruling will be found on Page 9, Lines 2 and 3 of said Official Report of Proceedings.

(10) To the statement of the Examiner appearing in the Intermediate Report on Page 2, Line 36, reading as follows:

> (Referring to respondents' motions to dismiss—being as to respondent Stockholders Publishing Company, Inc.—Board's Exhibit 2-e)
>
> "The undersigned denied said motions."

Exception is taken to such statement for the reason that it does not appear from the record that any ruling was made by the Trial Examiner with respect to such motion or motions, and if the statement quoted above is held to be a ruling upon such motion or motions, exception is taken thereto.

By reason of the fact that the Examiner in said Intermediate Report relies upon and frequently makes reference to the Board's decision and Direction of Elections, dated January 9, 1941, and Decisions supplemental thereto (See Intermediate Report, Line 13, et seq. Page 4, Line 39, et seq. Page 4, Line 24, et seq. Page 5, Intermediate Report) Respondent at this time excepts to certain rulings in said case instituted for investigation and certifi-

cation of representatives, being Case No. R-1923 as follows:

(1) To Finding II, entitled "The organization involved" of the Board, appearing on page 6 of the said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in the metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines, and periodicals, except those who have the power to hire and discharge."

(2) To that portion of Finding III, entitled "Status of the newsboys involved in this proceeding", appearing on page 16 of said Decision, reading as follows:

> "Accordingly, we find that the newsboys involved in this proceeding are employees within the meaning of Section 2 (3) of the Act."

(3) To that portion of Finding IV, entitled "The question concerning representation," appearing on page 16 of said Decision, reading as follows:

> "We find that questions have arisen concerning the representation of employees of the Companies."

(4) To Finding V, entitled "The effect of the questions concerning representation upon com-

merce", appearing on page 16 of said Decision, reading as follows:

> "We find that the questions concerning representation which have arisen, occurring in connection with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(5) To that portion of Finding VI, entitled "The appropriate units", appearing on pages 17 and 18 of said Decision and Direction of Elections, reading as follows:

> "* * * we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: (a) All full-time newsboys and checkmen who are engaged to sell The News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys * * * We further find that said units will insure to employees of the Companies, the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.",

(6) To that portion of Finding VII, entitled "The determination of representatives", of the

Board, appearing on page 18 of said Decision, reading as follows:

> "At the hearing lists prepared by * * * The News were introduced in evidence purporting to show the following approximate current number of newsboys employed by each of these Companies:
>
> News ..... 110 ....."

(7) To the "Conclusions of Law", appearing on page 19 of said Decision and Direction of Elections, reading as follows:

> "1. Questions affecting commerce have arisen concerning the representation of employees of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.
>
> 2. The following employees * * * Stockholders Publishing Company, Inc. * * * of Los Angeles, California, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: * * * all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys: * * *"

(8) To that portion of the "Decision and Direction of Elections", appearing on pages 19 and 20 of said Decision, reading as follows:

> "* * * Directed that, as part of the investigation authorized by the Board to ascertain

representatives for the purposes of collective bargaining, elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction of Elections, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the employees of the Companies within the groups described below who were employed by any of the Companies on the date of this Direction of Elections, including employees who did not work on said date because they were ill or on vacations, and employees who were then or shall have since been temporarily laid off, and excluding employees who shall have since quit or been discharged for cause:

* * * * * * *

(a) All full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys:".

Dated at Los Angeles, California, this 4th day of February, 1942.

STOCKHOLDERS PUBLISHING COMPANY, INC.

By BINFORD & BINFORD,

Its Attorneys.

By L. B. BINFORD

By HOWARD M. BINFORD

[Title of Board and Causes.]

Case No. C-2050
Case No. C-2051

Room 442
Shoreham Building
Washington, D. C.

A hearing was held in the above matter for the purpose of Oral Argument at the above place February 19, 1942 at 4:15 p. m.

Before:
William M. Leiserson, Member.
Gerard Reilly, Member.

Appearances:
Eugene Thorrens, of Counsel to the Board.

For the Company: L. B. Binford, 1208 Hollingsworth Building, Los Angeles, Calif. Harvey J. Kelly, H. Bar H. Ranch, Harrison, Idaho. For the Union: None.

[Title of Board and Causes.]

Case No. C-2050
Case No. C-2051

Mr. James A. Cobey, for the Board. Lawler, Felix and Hall, by Mr. John M. Hall, of Los Angeles, Calif., and Mr. Harvey J. Kelley, of Harrison, Idaho, for the Examiner. Binford & Binford, by Mr. L. B. Binford, of Los Angeles, Calif., for the News. Mr. Pat Comorre, of Los Angeles, Calif.,

for the Union. Mr. Eugene R. Thorrens, of counsel to the Board.

DECISION
and
ORDER

STATEMENT OF THE CASE

Upon charges duly filed[1] by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaints, dated December 5, 1941, against Hearst Publications, Incorporated (Los Angeles Examiner Department) and Stockholders Publishing Company, Inc., herein called the respondents, (sometimes called the Examiner and the News, respectively), alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.[2] Copies of the

[1]Charges against Hearst Publications, Incorporated (Los Angeles Examiner Department), and against Stockholders Publishing Company, Inc., were filed on November 21, 1941.

[2]By order entered on December 3, 1941, the Board, pursuant to Article II, Section 36(b), of its Rules and Regulations—Series 2, as amended, had consolidated the cases for the purposes of the pro-

complaints accompanied by notice of hearing were duly served upon the respondents and the Union.

Concerning the unfair labor practices, the complaints alleged in substance: (1) that on or about November 14, 1941, and thereafter, the Examiner and, on or about August 27, 1941, and thereafter, the News refused to bargain collectively with the Union as the exclusive representative of their employees within appropriate bargaining units, although the Union represented a majority of such employees and (2) that by such refusals the respondents interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

On December 15 and 16, 1941, respectively, the Examiner and the News filed answers admitting certain allegations of the complaints, but denying the commission of the alleged unfair labor practices and interposing certain defenses hereinafter set forth.

Pursuant to notice, a hearing was held in Los Angeles, California, on December 16, 1941, before Thomas S. Wilson, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and

---

ceeding. At the hearing herein the respondents objected to the consolidation order. The Trial Examiner overruled the objection. The ruling is hereby affirmed. In our present decision, as well as in the Board's decision in the representation proceeding hereinafter referred to, we have not considered evidence with respect to one publisher as applicable to any other publisher.

the respondents were represented by counsel, and the Union by its representative. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

On December 15, 1941, the Examiner had filed a written motion with the Regional Director to dismiss the complaint on the ground that the Board was without jurisdiction since the Examiner's operations did not affect interstate commerce and neither the members of the Union nor other persons alleged in the complaint as comprising the unit appropriate for the purposes of collective bargaining were employees of the Examiner. The Regional Director did not rule upon the motion. A similar motion was filed by the News at the outset of the hearing. The Trial Examiner denied the motions. During the course of the hearing, the Trial Examiner made several rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Thereafter the Trial Examiner issued and duly served upon the parties his Intermediate Report, dated January 7, 1942, finding that the respondents had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act, and recommending that the respondents

cease and desist from their unfair labor practices and, upon request, bargain collectively with the Union. On February 2, 1942, the Examiner, and on February 6, 1942, the News filed exceptions to the Intermediate Report and briefs in support of the exceptions. Pursuant to notice duly served on all parties, a hearing for the purpose of oral argument was held before the Board in Washington, D. C., on February 19, 1942. The respondents were represented by counsel and participated in the argument. The Union did not appear.

The Board has considered the exceptions to the Intermediate Report and the briefs submitted by the parties, and insofar as they are inconsistent with the findings of fact, conclusions of law, and order set forth below, finds the exceptions to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondents[3]

A. Hearst Publications, Incorporated (Los Angeles Examiner Department)

Hearst Publications, Incorporated, is a California corporation with its principal office and place

[3]The facts related in this section are taken from the Board's Decision and Direction of Elections dated January 9, 1941, in Matter of Stockholders Publishing Company and Los Angeles

of business in San Francisco, California. It is engaged in the publication of various daily and Sunday newspapers, including the Los Angeles Examiner.[4] The Examiner is a morning newspaper

---

Newsboys Local Industrial Union No. 75, C. I. O., et al., 28 N. L. R. B., No. 151, a representation proceeding which, as hereinafter set forth, involved the respondents herein. In the present proceeding it was stipulated by all parties that the business of the respective respondents has continued without material change from that conducted by them at the time of the hearing in the afore-mentioned representation proceeding.

---

[4]In addition to the Examiner, Hearst Publications, Incorporated, operates five other newspapers (Los Angeles Evening Herald and Express, San Francisco Examiner, San Francisco Call-Bulletin, Oakland Post-Enquirer, and Seattle Post-Intelligencer) and owns stock in the following subsidiaries: (1) American Weekly, Inc., a New York corporation which publishes "The American Weekly," a Sunday magazine and comic section which is a supplement and part of various Sunday newspapers published in cities throughout the United States; (2) Illinois Publishing and Printing Company, an Illinois corporation, which publishes the "Chicago Herald-American"; (3) Pitt Publishing Company, a Pennsylvania corporation, which publishes the "Pittsburgh Sun-Telegraph" and operates through its subsidiary WCAE, Incorporated, radio station FCAE; and (4) The Times Publishing Company, a Michigan corporation which publishes "Detroit Times." Hearst Publications, Incorporated is a wholly owned subsidiary of Hearst Consolidated Publications, Inc., a Delaware corporation, all of the common stock of which is owned by the Hearst Corporation, a Delaware corporation, a wholly owned subsidiary of American News-

published daily, including Sunday, at its plant in Los Angeles, California.[5] It has a daily[6] average circulation of approximately 213,460 copies and a Sunday circulation of approximately 566,175 copies. It is distributed throughout the State of California, principally in the metropolitan area of Los Angeles. Of the daily circulation, approximately 2 percent or 3,743 copies are sold and distributed outside the State of California. Of the Sunday edition, approximately 8 percent or 46,091 copies are sold and distributed outside the State of California.

The principal raw materials used in printing the Examiner include newsprint, mats, and ink. During the year 1939, all the newsprint, consisting of

---

papers, Inc., a Delaware corporation. Clarence J. Shearn, as voting trustee, holds the legal title to all the common stock of American Newspapers, Inc., for the benefit of William Randolph Hearst. Hearst Consolidated Publications, Inc., The Hearst Corporation, and American Newspapers, Inc., have various subsidiaries engaged in the publishing and other businesses in various parts of the United States. Cf. Matter of William Randolph Hearst, Hearst Publications, Inc., Hearst Consolidated Publications, Inc., Hearst Corporation, American Newspapers, Inc., and King Features Syndicate, Inc., and American Newspaper Guild, Seattle Chapter, 2 N. L. R. B. 530, enf'd as mod., National Labor Relations Board v. Hearst, 102 F. (2d) 658 (C. C. A. 9).

[5]This plant is devoted exclusively to the publication of the Examiner and is operated independently of other Hearst papers.

[6]Exclusive of Sunday.

31,470 tons, was obtained from the States of Washington and Oregon and the Dominion of Canada. During the same period, all the mats, numbering 51,100, were obtained from the State of New York. The ink used, amounting to 1,065,581 pounds, was manufactured in the State of California.

The Examiner uses International News Service, Associated Press, and Dow-Jones Financial Service wire reports. It uses daily approximately 88,750 words obtained from these services. The Examiner supplies at least 1 wire service engaged in the interstate transmission of news with local news which the Examiner has collected. In 1939 the Examiner received and published approximately 58 feature services, the material for many of which was prepared and originated in States other than the State of California.

During the year 1939 an average of 32 percent of the space in the daily and 48 percent of the Sunday issues of the Examiner was devoted to advertising. Of this advertising space, 89.67 percent contained advertising originating in the State of California while the remainder, 10.33 percent, contained advertising originating outside the State of California.

B. Stockholders Publishing Company, Inc.

Stockholders Publishing Company, Inc., a Nevada corporation having its principal place of business in Los Angeles, California, is engaged in the publication, distribution, and sale of a daily (except

Sunday) newspaper, "The News."[7] The principal raw materials used in the printing of the News consist of newsprint, mats, ink, and photographic supplies. During the year 1939, all the newsprint, costing approximately $470,000, and all the mats, costing approximately $4,800, were obtained outside the State of California. During the same period, all the ink, costing approximately $16,000, and most of the photographic supplies, costing approximately $3,600, were purchased within the State of California. The daily average circulation of the News for March 1940 was 195,725 copies, 534 of which were circulated and distributed outside the State of California.

The News uses the wire reports of United Press which furnishes news sent from outside the State of California. It uses daily approximately 27,000 words obtained from this wire service. In 1939 the News published 13 feature services which it received from service houses located outside the State of California.

During 1939, 9,909,000 lines of space was devoted to local, national, and classified advertising. Of this advertising space, 1,500,000 lines were devoted to national advertising.

---

[7]About April 1, 1940, the News combined "The Daily News," the morning edition, and "The Evening News," and thus established a 24-hour publication under a single name, "The News."

II. The organization involved

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization chartered by the Congress of Industrial Organizations, admitting to membership employees of the respondents.

III. The unfair labor practices

A. The refusal to bargain collectively

1. The appropriate units

The complaints allege that the following units are appropriate for the purposes of collective bargaining: (a) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys, and (b) all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys. The respondents contend that such units are inappropriate because newsboys having interests similar to those sought to be included in the units are excluded. We considered that contention in the Board's Decision and Direction of Elections, dated January 9, 1941, and found it to be without merit.[8] The respondents

[8]Matter of Stockholders Publishing Company, Inc., et al., and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., 28 N. L. R. B., No. 151.

introduced no new evidence bearing upon the appropriate units in the present proceeding. We have reconsidered the contention of the respondents and find no merit in it.

We find, as did the Trial Examiner, that (a) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys, and (b) all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, constitute units appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. We further find that the aforesaid employees at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining and that such units insure to employees of the respective respondents the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

2. Representation by the Union of a majority in the appropriate units

Pursuant to the Board's Decision and Direction of Elections, dated January 9, 1941,[9] separate elections by secret ballot were conducted under the direction and supervision of the Regional Director

[9] 28 N. L. R. B., No. 151.

for the Twenty-first Region (Los Angeles, California) on May 14, 1941, among newsboys of the News, and on May 15, 1941, among newsboys of the Examiner. As a result of the elections, the Board issued its Supplemental Decision and Certification of Representatives, dated July 30, 1941,[10] and its Certification of Representatives, dated October 20, 1941,[11] certifying that the Union had been designated and selected by a majority of all employees within the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. No evidence was introduced in the present proceeding to rebut the presumption arising from the certifications that the Union is still such representative.

We find, as did the Trial Examiner, that on and at all times after July 30, 1941, with respect to the News, and at all times after October 20, 1941, with respect to the Examiner, the Union was the duly designated bargaining representative of a majority of the employees in each of the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times and is now the exclusive representative

[10] 33 N. L. R. B., No. 168.

[11] 36 N. L. R. B., No. 51.

of all employees in each of the aforesaid units for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

The complaints allege, and the respondents admit in their respective answers, that on or about August 27, 1941, and thereafter, with respect to the News, and on or about November 14, 1941, and thereafter, with respect to the Examiner, the respondents refused to bargain collectively with the Union. The answers, however, assert that such refusals to bargain were based upon advice of counsel and in the bona fide belief that the Board had no jurisdiction over the respondents with respect to their relationship with the newsboys since they were independent contractors and not employees. The respondents denied in their answers that they were engaged in commerce within the meaning of the Act.

In its Decision and Direction of Elections dated January 9, 1941,[12] based upon the record of the representation hearing held at Los Angeles, California, from June 10 to 27, 1940, the Board held that the respondents were engaged in commerce within the meaning of Section 2 (6) and (7) of the Act, and that the newsboys of the respondents within the aforesaid appropriate units were employees within

[12] 28 N. L. R. B., No. 151.

the meaning of Section 2 (3) of the Act.[13] The respondents did not call any witnesses or introduce any other relevant documentary evidence at the present hearing.[14]

The News urges, however, that the evidence introduced in the representation proceeding with respect to the News fails to support the Board's findings of fact underlying its ultimate conclusion with respect to the status of the newsboys vending the News. Particularly, the News asserts, contrary to our findings, that district managers handling its publication are not carried on its pay roll and that they are not employees of the News. While not all the findings in the Board's Decision, dated January 9, 1941, with respect to the relation between the publisher, district manager, and newsboy are applicable to the News, the record supports our previous determination that the district managers handling the News, like district managers of the

[13] During the hearing on the complaints, the Examiner and the News stipulated that "if all witnesses called by the Union, the Board, and respondent at the hearing at Los Angeles, California, from June 10, 1940, to June 27, 1940, were called to testify in this proceeding at this time, their testimony would be substantially the same as the testimony given at said hearing on June 10, 1940, to June 27, 1940; . . ."

[14] The Examiner offered in evidence, and the Trial Examiner rejected, transcripts of testimony and findings of the Industrial Accident Commission of the State of California in a workmen's compensation case wherein the Examiner was found not to be the employer of a newsboy. We hereby affirm the Trial Examiner's ruling.

other publishers involved in the representation proceeding, are employees of the News and that through the district managers the News directs and controls the newsboys with respect to the circulation and distribution of that publication.

District managers of the News receive for their services a guaranteed minimum plus commissions and, to that extent, are on the News' pay roll. If the earnings of a district manager are less than the guaranteed minimum, the News pays him an amount sufficient to yield the district manager the minimum guarantee. In the event the district manager's income exceeds the minimum guarantee, he retains the excess. The News argues that, because its district managers fix the amount which they charge newsboys for copies of the News, they are independent contractors making whatever profit they can from the resale of papers. We rejected this contention in the prior representation proceeding. The minimum sum guaranteed by the News to its district managers is no more than a fixed salary bearing another label. The so-called profit above the minimum guarantee is merely a variant of the bonus or commission system typical of nearly all mercantile business.[15] We are of the

[15]We have frequently held solicitors and salesmen paid on a commission basis to be employees of the firms they represent. See, for example, Matter of Washington Branch of the Sun Life Insurance Company of American and Industrial and Ordinary Insurance Agents Union No. 21354, Industrial and Ordinary Insurance Agents Council, 15 N. L. R. B., 817, 821.

opinion that the method used by the News for payment of its district managers supports our previous finding that they are employees of the News and that their control over checkmen and newsboys, hereinafter described, is exercised on behalf of the News.

Furthermore, the News allocates a geographical area, varying in size, to each district manager and each district manager is authorized to distribute the News within the assigned territory.[16] Each district manager obtains newspapers for the purposes of distribution at the News' office, or the News transports the newspapers to the district manager at a designated point within his territory. The district manager travels throughout his district, and delivers the newspapers to newsboys who sell them to the public, or to so-called checkmen stationed at important corners or spots who redistribute the newspapers to newsboys stationed at neighboring corners and spots of lesser importance. The checkmen are unquestionably employees of the News for the purpose of redistributing the newspapers and

[16] Dutton F. O'Brien, circulation manager of the News, testified that district managers either come to the office for their papers or the various editions of the News are sent to the district managers in "their territories." In their testimony, News district managers referred to "my district."

The title "district manager" implies that each manager has a fixed district. Furthermore, the fact that the newsboys have fixed locations indicate that the district managers have definite districts allocated to them by the News.

the district managers have supervision over them in the performance of their duties.[17]

The newsboy vending the News customarily obtains his corner or spot by making application for "a job" to the News district manager who assigns an opening to the applicant. In addition to allocating corners and spots, News district managers also issue detailed instructions as to the specific places within the newsboy's allotted territory where he is to engage in selling activities, particularly with reference to standing in street traffic and covering business establishments where large numbers of people congregate. News district managers, in at least some instances, unilaterally determine the number of papers allocated to newsboys for sale.[18]

---

[17]For his services in redistributing newspapers the checkman receives a small salary from the News. The checkman is carried on the News' pay roll and, at least to the extent of such services, he is admittedly an employee of the News. In addition to such redistributing activity, the checkman sells newspapers to the public and, in all other respects, he occupies a position similar to that of the ordinary newsboy.

[18]In finding in the representation proceeding that district managers of the publishers fix the number of papers that the newsboy must attempt to sell, the Board relied, in part, upon the testimony of Arthur Steuart, a newsboy. At the oral argument before the Board in the instant proceeding, counsel for the News asserted that Steuart's testimony referred only to control exercised by Herald district managers. The record shows, however, that Steuart also sold the News and that he testified that the News district manager, Willie Matz, "gives me . . . the number he figures I should have."

The price of the newspaper to the public is set by the News and is printed on the masthead. The newsboys and the district managers are permitted by the News to return unsold copies and receive credit for them. Newsboys vending the News retain for themselves as earnings the difference between the amount they pay the district manager for the newspaper and the sum they receive for it from the public. The News, however, furnishes paraphernalia, including racks, change aprons, and placards advertising special features contained in the newspaper, bearing the name of the publisher. To facilitate the work of the newsboy and to increase circulation, News district managers distribute such equipment and advertising matter to the newsboys with instructions to keep the newspapers in the racks and to display the advertising matter on posts, fire plugs, or other vantage points. Generally the newsboy vending the News is required to be at his post from the time the newspapers customarily appear on the street to the time settlement is made, and in some instances the News district manager definitely fixes the newsboy's hours. Pursuant to specific instructions of the News, its district managers instruct newsboys vending the News as to the manner of holding the paper while engaged in street selling. In their discretion News district managers transfer newsboys who sell the News from one location to another for various reasons and discipline them for neglect of their selling activities.

In support of their contention that the newsboys are not employees both respondents rely upon our decision in Matter of Houston Chronicle Publishing Company and Houston Newsboys Union, Local 456.[19] That case does not govern in the present proceeding. In the Houston Chronicle case we held that the newsboys involved in that proceeding were not employees within the meaning of the Act since the record in that case disclosed that the publisher exercised no supervision or control over activities of the newsboys with respect to the manner and methods used in news vending. In the Houston Chronicle case, unlike the situation in the instant proceeding, it appeared that, among other things, any person could secure newspapers at wholesale from the publisher to sell on the streets; the newsboys themselves were alone responsible for the location they selected to sell newspapers; the publisher in no way regulated the number of papers issued to the newsboys; and, the newsboys were free from company restriction with respect to the manner and methods used on the street in news vending.

We have reexamined the evidence introduced at the representation hearing. Since we see no reason to depart from our prior determination, we hold that the newsboys involved in this proceeding are employees within the meaning of Section 2 (3) of the Act.

We find, as did the Trial Examiner, that the respondent News on August 27, 1941, and at all times

[19] 28 N. L. R. B., No. 155.

thereafter, and that the respondent Examiner on November 14, 1941, and at all times thereafter, has each refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of each of the respondents, set forth in Section III above, occurring in connection with the operations of each of the respondents described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Since we have found that the respondents have engaged in unfair labor practices, we will order that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We have found that the respondents have refused to bargain collectively with the Union as the representative of a majority of the employees in appropriate units. We will therefore order that the respondents, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the cases, the Board makes the following:

Conclusions of Law

1. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization, within the meaning of Section 2 (5) of the Act.

2. The following employees of Hearst Publications, Incorporated (Los Angeles Examiner Department) of Los Angeles, California, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys.

3. The following employees of Stockholders Publishing Company, Inc., of Los Angeles, California, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys.

4. Los Angeles Newsboys Local Industrial No. 75, C. I. O., has been at all times material herein

and still is the exclusive representative of all employees in each of the aforesaid units for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of all its employees in an appropriate unit, each of the respondents has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, each of the respondents has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Hearst Publications, Incorporated (Los Angeles Examiner Department), and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys:

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys:

(b) Post notices immediately in conspicuous

places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Stockholders Publishing Company, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys:

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organizations, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranted in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 30 day of March 1942.

HARRY A. MILLIS,
Chairman
WM. M. LEISERSON,
Member
GERARD D. REILLY
Member
[Seal] NATIONAL LABOR RELATIONS BOARD

HERALD EXHIBIT NO. 9

[Title of Board and Cause.]

Case No. XXI-R-928
Consolidated with
Case No. XXI-R-927,
Case No. XXI-R-1062
and
Case No. XXI-R-1084

STIPULATION

It is hereby stipulated and agreed, by and between the undersigned as counsel for the National Labor Relations Board, Twenty-first Region, and

counsel for Los Angeles Evening Herald and Express Department, a separate business enterprise which is wholly owned and operated by Hearst Publications, Incorporated, respectively, that if William J. Harrison, a witness who was called and sworn in this case, should be recalled, he would testify under oath as follows:

That as shown by the Agreed Statement of Facts filed in these proceedings, and being Board's Exhibit 2, as amended by Board's Exhibit 2-A, that for the year 1939 the Los Angeles Evening Herald and Express had a daily average net paid circulation of 243,022, of which 903 copies were sold or distributed outside the state of California, or in other words, that on the average 37/100 of 1% of the circulation of said newspaper is sold and distributed outside the state of California, while 99 and 63 100% of the circulation of said newspaper is sold and distributed wholly within the State of California, and that full time newsboys and check men, as defined in this proceeding, do not buy or sell or in any manner handle any of the 903 copies of the Los Angeles Evening Herald and Express sold and distributed outside the State of California, and that any change in the volume of the sales of such newsboys, as they have been defined in these proceedings, would not increase or decrease the volume of the sales of the newspaper outside of the state of California, and would not in any way, directly or indirectly, affect the sale of such newspaper outside the state of California.

Dated at Los Angeles, California, this 27th day of June, 1940.

FRANK A. MOURITSEN
Counsel for the Board
FLINT & MacKAY
By EDWARD L. COMPTON
Attorneys for Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated

---

HERALD EXHIBIT NO. 5

BILL OF SALE

For and in consideration of the sum of One Hundred Fifty Dollars ($150.00), the receipt whereof is hereby acknowledged, the undersigned, Mae Williams, a widow, of Los Angeles, California, as the sole heir at law of Frank Maciewski, Deceased, does hereby sell, assign and transfer unto Henry Powers, a single man, all of the right, title and interest of said Frank Maciewski, and the undersigned, as the sole heir of said Frank Maciewski, Deceased, in and to the right to sell newspapers, magazines and periodicals, including morning, evening and night newspapers, on the Northwest corner of Fifth and Spring Streets in the City of Los Angeles. This assignment includes all contractual rights of the said Frank Maciewski to said location and all cus-

tomary rights which were acquired by said Frank Maciewski during his lifetime.

The undersigned does hereby warrant that she is the sole heir of said Frank Maciewski, deceased, and that the total value of the Estate of said Frank Maciewski, deceased, at the time of his death was less than $1000 in value.

Dated this 21st day of January, 1939.

(Signed) MAE WILLIAMS

614 W. 84th Street, Los Angeles.

State of California,
County of Los Angeles—ss.

On this .... day of January, 1939, before me, ..., a Notary Public in and for said County and State, personally appeared Mae Williams, known to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that she executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....

Notary Public in and for said County and State

Witnesses:
A. GORDON, 4201 Clayton Ave.
STANLEY KOPPEL, 1028 Overton.
GUS GEORGON, 730 S. Westlake.

HERALD EXHIBIT No. 2

[Letterhead of Downtown Business Men's Association]

December 21, 1934.

Mr. David Bell, Mgr. Street Circulation,
Herald-Express,
1243 Trenton,
Los Angeles, Calif.

Dear Mr. Bell:

Having received some complaints on your newsboy at the northeast corner of Fifth and Spring Streets, the Rowan Bldg. corner, we are requesting that you transfer this man to another section of the city.

The business men in that locality feel that this man is not the type to be selling your paper.

We feel that you will cooperate by making this suggested change immediately.

With best wishes for a Merry Christmas and a prosperous New Year, we are

Yours very truly,

DAIN STURGES,
Secretary.

DS:S